

Restorative Justice and Public Opinion: The role of  
citizen, community and the state in justice

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## **Abstract**

Existing research on public opinion of restorative justice has shown public support for restorative principles. However, there has been little to no qualitative research exploring what aspects of restorative justice are supported by the public. This research attempts to fill this gap by focusing on how people view the ideal relationship between communities, individuals and the state and whether this supports a restorative approach to justice. This thesis will show that focus group and town hall participants think about justice as existing along a continuum, with different principles of justice taking priority at different points along the continuum. This continuum helps us understand varying levels of community and government intervention in justice matters with the responsibility of justice being shared based on the principle of justice being prioritized.

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## **CHAPTER ONE: INTRODUCTION**

Numerous scholars have argued that we are currently experiencing a crisis of confidence in the criminal justice system (Roberts, 2004; Clairmont, 2000; Paciocco, 1999, Adams, 1990). David Paciocco (1999) contends that the crisis that exists within the Canadian criminal justice system is one of public confidence. At a time when the effectiveness of the justice system is being questioned, it is not surprising that alternative approaches such as restorative justice are being considered.

Restorative justice is very different from our current retributive approach to crime and justice. As an approach to crime, restorative justice — which aims to repair harm to the victim, offender and the community — is expressed in a wide range of programs. Within this model of justice, crime is not defined in terms of law, as in our current criminal justice system, but in terms of the harm caused by an offence. A restorative approach is holistic, allowing for the direct involvement of those affected by the harm, including both victims and community members. In contrast to a retributive approach, restorative justice is concerned with repairing the various harms caused by criminal acts and rests on the direct participation of all those directly affected by the wrong-doing.

The last decade has seen a rise in the number and variety of restorative justice programs available in Canada. In 1999 the Supreme Court decision in the Gladue case set the stage for the use of restorative justice in the criminal justice system (Roach and Rudin, 2000). In 2003, with the introduction of the Youth Criminal Justice Act (YCJA), agents of the justice system were given more options for responding to youth crime, including the use of restorative justice. Programs have sprung up at the national,

provincial and local levels. In 1999, the Nova Scotia government created the Nova Scotia Restorative Justice Program (NSRJ).

The Nova Scotia program is the largest and most comprehensive Restorative Justice program for youth in Canada. One of the objectives of the NSRJ program is to increase public confidence in the justice system (Nova Scotia Department of Justice, 1998). This is important if the numbers of restorative programs are to expand and if overall public confidence in the justice system is to increase. Understanding public support for restorative justice is important, especially given the centrality of community and the public to restorative justice theory and programs.

Using a governmentality framework this thesis explores what public understandings of justice mean for the governing of crime under advanced forms of liberal government. Further, this project focuses on how representatives of the community view the ideal relationship between communities, individuals and the state and how this view relates to their openness to a restorative approach to justice. As this thesis will show, understanding both aspects of public opinion can have an effect on the development of restorative justice policy.

### **Research Questions and Objectives**

This thesis represents an evolution of my thoughts on this project. While working on this project I was exposed to new research and a variety of different perspectives. As such, the initial questions that motivated this research changed as I incorporated new perspectives and ways of thinking. My interest in this area began with a more empirical question about the role of public opinion in the viability of restorative justice. After

reading theoretical works of governmentality the questions became more conceptual, focusing more on the relationship between citizens, communities and the state in the justice process, while still focusing on restorative justice. Though the evolution of this project has changed the substantive topic area of the research to encompass issues broader than restorative justice, much of the motivations for this research has come from a keen interest and belief in the use of restorative justice. As a result, this project integrates a number of different perspectives and represents an evolution of thinking on a broad topic area, but it is ultimately a thesis about restorative justice. Broadly, my research focuses on the following related research questions:

**1. How do people think justice should be done?**

- I. (a) Explore how people understand crime and justice
  - (b) Identify the relationships and contradictions they create with these principles
- II. Describe how people view the relationship between state-community-citizen in justice matters

**2. What does this view mean for restorative justice?**

- I. Assess how open people are to the principles of justice embedded in restorative justice
- II. Assess how open people are to the enhanced role of the community and citizen proposed by restorative justice

**What do people's views of justice mean in terms of governmentality?**

- I. Analyze the issues of governance embedded in the way people understand justice
- II. Assess how the citizen-community-state relationship associated with people's views on justice relate to issues of governance
- II. Analyze what these issues of governance mean for restorative justice

It is my hope that answering these questions will illustrate the benefits of exploring people's thinking about justice concepts. With this in mind, there are a number of ways in which I hope this thesis will be of value to restorative justice theory and practice.



This thesis explores a number of issues and themes that are central to restorative justice. Specifically, this research focuses on the perceived roles and responsibilities of communities, offenders (youth in this case), and citizens in the restorative process. With restorative justice still being considered by many as an “alternative” form of justice, it has not yet become an entrenched part of the Canadian Criminal Justice System. Public support and acceptance of the principles is critical (Roberts and Doob, 1989). A justice process that is not supported by the public is more likely to fail. If restorative justice advocates hope to establish a more prominent place for restorative justice within the criminal justice system, these logistical and practical considerations around roles and responsibilities are important to explore.

The second theme is the change in the relationship between citizens, communities and the state implicit in restorative justice. Restorative justice theory is clear: restorative justice requires a more active involvement on the part of communities and individuals at the same time scaling back the involvement of the state. This thesis begins to explore public opinion with an eye towards understanding ways the public might be supportive of this change and identifying those aspects where they appear more hesitant. I will demonstrate how current survey research has found tentative support for the principles of restorative justice but that people express a number of hesitations around the use of restorative justice with repeat offenders and more serious crimes. My analysis will draw on works of governmentality to make sense of these findings, incorporating the qualitative data obtained as part of this research project.

**Thesis Overview: A peek at what's to come**

This thesis will begin with an exploration of the relationship between citizens, communities and the state in justice matters from a historical perspective. The purpose of this chapter is to provide a context for assessing the current relationship between citizens, communities and the state. The next chapter will bring some theoretical discussions to bear on the relationship between citizen, community and state. Throughout this chapter I will begin to identify new ways of understanding this relationship, focusing on notions of power and how power is dispersed between various actors. It is this complex web of power that will be critical in exploring how restorative justice interacts with citizens, communities and the state in the justice system and how this type of approach may fit with the current political climate. Both the theoretical and conceptual backgrounds will help to shed light on how the relationship between citizens, communities and the state could impact the use of restorative justice programs in the justice system.

In Chapter Four we switch focus to look at the empirical literature on public opinion and criminal justice. A number of contradictions and complexities emerge from this literature. On the one hand, the public is concerned that the criminal justice system is soft on crime. On the other hand, when closely examined the public may not be as punitive as often suggested. Further, when we look at the research on public opinion and restorative justice, we find tentative support for many of the principles of this approach to criminal justice.

Chapter Five provides the details of the methodological approach adopted for this research project. Given the nature of my research questions, this project required a

methodology that allowed me to get an in-depth understanding of people's views about the justice process. For this reason I chose to use focus groups in collecting data for this project. This chapter looks at the main advantages and disadvantages of the focus group method in relation to this project. I also discuss the particular procedure and methods used in this study as well as a reflection on how these methods worked during the actual data collection phase of the research, including any implications these issues may have had on my analysis.

Chapter Six represents the core analysis of the research findings. It provides a descriptive analysis of the main themes identified within the focus groups and town hall discussions. Through a close examination of the data I argue that focus group and town hall participants think about justice as existing along a continuum, with different principles of justice taking priority at different points along the continuum. This continuum helps us understand varying levels of community and government intervention in justice matters, something central to my research questions.

Finally, the conclusions provide an opportunity to reflect on the findings presented in the thesis and look at the major implications that these have on three important areas of knowledge: public opinion research, restorative justice theory and practice, and governmentality theory. The chapter integrates these topics to assess how this can help us to develop a restorative theory of justice that is true to its principles but also responsive to public opinion.

## CHAPTER TWO: BACKGROUND

*“The way we understand and judge behaviour is never fixed. It reflects our striving for a better understanding of right and wrong as well as the ebb and flow of power relations in our society.” (Law Commission of Canada, 1999)*

This chapter will introduce the core principles of a restorative theory of justice and explain how they differ from our current approach to justice—with a particular emphasis on how citizens, communities and the state intersect in justice matters. To begin, I will provide a brief historical overview of the changing role of citizens and the state in the justice process. This examination will serve to demonstrate that changes in the relationship between individual citizens, communities and the state are linked to broader social, political and structural change. Specifically, I will demonstrate that the modern criminal justice system is a product of the centralization of power that happened with the emergence of the modern nation state. I will argue that this concentration has had a particular impact on current changes being undertaken within the criminal justice context. Next, I will outline the basic principles of a restorative approach to justice to highlight the change in the relationship between citizens, community and the state proposed by a restorative theory of justice. The fact that restorative justice is so different from the traditional justice system raises questions about the willingness of the public to accept it.

### **Restorative Justice: A new approach to criminal justice practice?**

Questions about justice are some of the oldest questions discussed by philosophers and social theorists (Cohen, 1986). Justice is often associated with an ideal of moral right and wrong. Tracing the history of the subject, however, shows that the meaning of justice and how justice is achieved has changed significantly over time. Justice matters shifted

from being the responsibility of individuals and communities to being controlled by the state through the gradual centralization of power and eventual creation of formal justice institutions. In recent years, restorative justice has emerged as a new theory of justice, which is being implemented within these justice institutions. Understanding the evolution of the state's role in criminal justice matters will contextualize the rise of a restorative theory of justice. In the words of David Garland (2001), "it is only by understanding the past that we can hope to discover what is genuinely new about the present" (p.29). With this in mind, this section provides some illustrations of how different societies have historically viewed crime and criminality differently, with particular emphasis on the role of the state and citizens in these processes.

This overview is theoretically driven and will serve to demonstrate how our current justice system has not always existed in the same form or for the same purpose. The survey will focus on western societies as this serves as a useful illustration as to the origins of the Canadian criminal justice system. Johnson and Wolfe (1996) explain that the roots of western society can be traced "deep into antiquity" (p.19), and so we begin this survey by examining some notable ancient cultures and how they addressed deviant behaviour.

### **Justice in Ancient Times**

The Greek city state of Athens "provide[s] the ideal of a culture governed by the active political participation of the people in the affairs of government" and the distant role of the state in governing disputes (Johnson and Wolfe, 1996: 19). The state did not prosecute citizens in this society. Rather, the state acted as "weigher of evidence." The

victim was responsible for initiating any complaint of wrongdoing and making the arrest. Often the process was started with the filing of a complaint with a magistrate (Johnson and Wolfe, 1996, 25). Magistrates or judges did not hold any real power in this system. Once a citizen initiated a case, evidence was presented to the courts and juries of up to 50 citizens voted on a person's guilt or innocence (Johnson and Wolfe, 1996). Another signifier of the distant role of the state was the fact that "both plaintiff and defendant could stop the procedure immediately by mutual agreement" (Bianchi, 1994:14-15).

Historians have described some basic procedural similarities between Athenian society and Biblical Israel where victims also initiated prosecutions. Most conflicts were dealt with by trials, known as the "court at the gate." Victims would wait at the court gate in the mornings for Elders who would be asked "to do justice" (Johnson and Wolfe, 1996, 25). Both societies were characterized by active citizen participation and engagement in criminal justice matters, which is a marked contrast with modern criminal justice systems. Also, the state or government had a largely peripheral role in the process, while victims and the community took a more central role in resolving conflict.

A key difference between Biblical Israel and Ancient Athens was that the criminal justice system in Israel was built upon deep religious beliefs. Deviant behaviour was deemed wrong for two reasons:

- (1) it destroyed the bonds of society and caused dissention among the people of Israel, and
- (2) the wrong of any member of God's chosen people could easily bring divine wrath down upon the entire nation. (Johnson and Wolfe, 1996)

Crime was understood to break *shalom*, destroying relationships within a community and creating harmful ones. Hebrew justice, then, aimed to restore relationships to wholeness.

What is perhaps most interesting about this rationale is the communitarian principles that underlie it. Justice in biblical Israel involved greater good of the community, meaning it was in the best interest of the entire community to ensure that people do not commit crimes. This is a marked contrast with the current structure of criminal justice in the western world where citizens are largely peripheral in the process. The state, in the form of justice institutions, is at the centre of the process and responsible for all aspects of the investigation and prosecution of crime (Zehr, 1990).

The next big shift in how justice was done came with the implementation of codified laws, which served as a shift from notions of collective to individual responsibility. The Code of Hammurabi (ca. 1760 B.C.) is one of the first examples of codified laws. Hammurabi, ruler of Babylon from 1796 B.C. – 1750 B.C., created the code in an effort to eliminate some of the dangers of private vengeance in addition to promoting the welfare of the people (McDonnell, 1986, 90). There are 282 laws outlined in the Code of Hammurabi. The 282 laws are bracketed by a prologue in which Hammurabi introduces himself, and an Epilogue in which he affirms his authority and sets forth his hopes and prayers for his code of laws. The Code does not provide opportunity for explanation or excuses, though it does imply citizens' right to present evidence (Weitekamp, 1999). Before the Code of Hammurabi, responsibility for crime was often assigned to entire groups (McDonnell, 1986). With the creation of the codes the responsibility shifted from groups to the individual transgressor. This is a notable shift away from notions of community responsibility to a more individualized justice process, a central feature of modern justice processes.

With the fall of the Roman Empire in 476 A.D., the ways of dealing with crime and punishment became localized and varied from region to region (Johnson and Wolfe, 1996). The structure of the modern nation state began to emerge during this period, with power becoming increasingly centralized under tribal chieftains, priests, kings and the ruling classes. The development of Feudalism, however, spawned a sort of localized justice within each manor. The structure was such that lords held almost complete authority over all civil and criminal disputes within their manor, leading to varying penalties and procedures. During this period the individual and community began to have a less active role in the justice process than in earlier societies, marking the beginning of a shift away from direct citizen involvement.

### ***The Middle Ages and Early Modern Period***

The period of 1150 to 1550 A.D was characterized by a great deal of social and economic change. The end of this period saw the erosion of the Feudal system. The era was also characterized by a close connection between the church and the state. The centralization of power and the development of religious beliefs led to the creation of new offences and more severe forms of punishments (McDonnell, 1986, pp.109-110). At this time, principles of the Christian church became the basis for law and order in society, moving away from localized forms of justice and acting to centralize the law within a more formal institutional structure.

The invasion of Britain by the Normans in the eleventh century signified another major shift in the way conflict was defined. Focusing now on Britain is important for two reasons. First, it is an important illustration of the changing role of government at a time



when the structure of the state was changing a great deal. Secondly, Britain is especially significant in relation to Canada, since our justice system is so heavily based on the British system.

By the end of the eleventh century, crime was no longer perceived as injury or conflict between persons, but rather as an offense against the state. As Baker (2002) explains, before the invasion, “the constitutional theory that justice is the prerogative of the Crown was beginning to have some foundation, in fact, though it was not yet expressed in words” (p.9). William the Conqueror developed a legal system aimed at centralizing power with the King. His successor, Henry I, went on to create crimes against the “King’s peace,” changing the way crime was defined from a harm committed against an individual to a harm committed against the state. Infractions that violated this peace were considered to be an offense against the King; the actual victim was denied any significant role within criminal cases (Wilkinson, 1997). This period was also characterized by a perceived “failure of justice” by feudal lords in civil cases leading the king (or state) to take jurisdiction over civil cases.

These changes solidified the central role of the state in the criminal justice process which has come to be questioned by restorative justice scholars. Some restorative justice advocates argue that, within the current framework, the state has stolen conflicts from their rightful owners, those directly affected by crime (Christie, 1977). The redefinition of crime as breaking the King’s Peace represents a major shift in the nature of the justice process, placing the state at the centre of the justice process.<sup>1</sup>

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<sup>1</sup> Some have also noted that the changes brought about by William the Conqueror mark the turning point from restitutive to state-centred forms of justice (Llewellyn, and Howse, 1999).

Early Modern English systems of criminal law still rested, in part, on forms of state regulated “private vengeance” (McDonnell, 1986, p.115). Some argue it was the need to completely eliminate forms of private vengeance, which led to the formation of the English tort and criminal law system (McDonnell, 1986). More specifically, Garland (2001) argues that the many abuses and problems that arose from systems of private vengeance were closely linked to the establishment of a more centralized sovereign power. As Garland (2001) explains:

The ‘guarantee’ of law and order, of security for the citizens against violence, crime and disorder became one of the key public benefits conferred upon the people by the state and its agencies. (pp.30-31)

Baker (2002) explains the gradual transition from localized justice to centralized justice was a slow process. The English legal system was comprised of a series of local level courts that existed for a long time. Baker (2002) contends that these courts gradually became challenged by the king’s courts, particularly when the king’s courts began to overturn judgments made by the local courts. In fact, it was only during the Tudor era (1500’s) that these localized courts fell victim to the “axe of uniformity” (Baker, 2002: 26). What is important to note here is the connection between the emergence of the modern nation-state structure, characterized by a formal centralized power, and the shifting of responsibility for crime exclusively to the state or sovereign.

The current criminal justice system, its institutions, and the way justice is done in Canada is a fusion of old ways of doing justice with new ideas meant to address problems with old systems. With the gradual emergence of justice institutions, such as the court and police, and as society became more complex, so did laws and the legal system,

developing into what we now think of as the formal criminal justice system. Some argue the current adversarial system of justice emerged as late as the 1700's (Langbein, 2003).

Langbein (2003) explains that the original structure of the court process was not the adversarial system we currently have. He argues that the original purpose of the trial was to allow the accused to answer charges in person. Interestingly, Langbein (2003) contends that the introduction of lawyers served to dictate the structure of a lawyer-dominated adversarial trial process. According to Langbein (2003), lawyers manipulated the process in a way that led to the eventual silencing of the offender in the process. While the court as an institution may not have been created to exclude the voice of individuals within the justice process, the gradual changes and shifts have created a system in which individuals have a less prominent role. This change served to further shift the relationship between individuals and the justice process. The current adversarial framework is one that does not leave room for the active participation of individuals directly involved in justice matters. This is something that the emergence of restorative justice theory has challenged.

### **Restorative Justice: A change in the way we do justice?**

Llewellyn and Howse (1999:13) describe how several related movements aimed at addressing problems in the criminal justice system are largely responsible for the rise of restorative justice. Some examples include the victims' rights movement, which began to grow in the 1960s, various restitution programs, which are now being used to address criminal matters, as well as broader social justice movements outside the criminal justice system. The rise in popularity of these related movements and others have helped pave

the way for restorative justice. In fact “restorative justice theory ...draws much from the wisdom gained from the experiments and experiences” of these related movements (Llewellyn and Howse, 1999).

This interest has resulted in an increase in the number of programs calling themselves “restorative.” In 1998 a Corrections Services Canada study found more than 200 restorative justice initiatives currently in place in Canada (Corrections Services Canada, 1998). By 2000, the Canadian delegation of the United Nations Congress on the Prevention of Crime and Treatment of Offenders claimed approximately 400 restorative justice programs in Canada. With this expansion has come a growth in academic writings in the area of restorative justice. Despite the large amount of writing on restorative justice, academics differ on their definitions of the concept and the language around the theory is still being established.

While definitions differ, most would agree that, as an approach to justice, restorative justice aims to shift the focus of the justice process from punishment to restoration. This shift is accomplished by emphasizing the participation of the victim, offender and the community in addressing criminal behaviour and minimizing the formal role of the state. Among restorative justice scholars a number of different definitions have emerged. Tony Marshall has offered a concise definition of restorative justice:

Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. (quoted in Llewellyn and Howse, 1999, p.20)

Marshall’s definition exemplifies the inclusive approach to crime, by attempting to include all parties with a stake in the restorative process. Daniel Van Ness provides a

more detailed definition by outlining three key principles of restorative justice:

- (1) Crime results in injuries to the victims, communities and offenders; therefore the criminal justice process must repair those injuries.
- (2) Not only the state, but also victims, offenders and communities, should be actively involved in the criminal justice system at the earliest point and to the greatest possible extent.
- (3) The state is responsible for preserving order, and the community is responsible for establishing peace. (quoted in McElrea, 1996: 72)

These principles point to a change not only in the way crime is viewed, but to the role of the state in the criminal justice process. In 1996 the US National Institute of Corrections sponsored a teleconference on restorative justice, at which time a panel of experts outlined seven core values of restorative justice:

1. Crime is an offence against human relationships
2. Victims and the community are central to the justice process
3. The first priority of justice processes is to assist the victims
4. The second priority of justice processes is to restore the community, to the degree possible
5. The offender has a personal responsibility to victims and to the community for crimes committed
6. The offender will develop improved competency and understanding as a result of the restorative justice experience
7. Stakeholders share responsibilities for restorative justice through partnerships for action. (Seymour and Gregorie, 2002, p.1)

These definitions show that restorative justice represents a major shift away from the way crime is currently viewed.

Many restorative justice advocates try to define the concept by highlighting the differences between restorative justice and our current criminal justice system, a primarily retributive system. Table 1 provides a summary of these distinctions, which will provide a useful reference point as I expand on the underlying principles of a restorative theory of justice.

**Table 1. Restorative Justice versus our Current Model of Justice**

<b>Current (Retributive) Model</b>	<b>Restorative Justice</b>
Focus on assigning blame	Focus on repairing harm
Adversarial (trials)	Consensus oriented
Reactionary (applies to situation in which an offence has already occurred)	Both Proactive and Reactive (linked to broader social justice goals)
State oriented/dominated	Community/Individual oriented (those harmed by an incident)
Consistency	Flexibility

In the criminal justice context, restorative justice is often seen as an umbrella term that encompasses a wide range of programs and practices (Shapland et al., 2006).

Restorative justice theory has been expressed in a wide range of programs from family group conferencing and sentencing circles to international Truth and Reconciliation Commissions. J.O. Haley (1996) sets out, broadly, that the label of restorative justice can be made to apply to:

Any program within a system of criminal justice that emphasizes the offender's personal accountability to those harmed and the community, in a process in which the victim and the community participate directly in determining what the offender should do to make reparation and to allow reintegration. (Haley, 1996: 351)

This definition also highlights some key components of a restorative theory of justice. Crime inflicts harm on communities as well as victims and, following from this understanding, justice is seen as a process aimed at finding a resolution to the harm. Given the scope of harm identified by restorative justice, the justice process should include the participation of the victim as well as the community in the resolution of harm. In addition, the ideals of reparation and reintegration are important; within the current

justice frameworks these principles are not central to the justice process.

Despite the variation within the literature in how restorative justice is framed, a number of core principles are essential to a restorative process: (1) foregrounding the victim in the process, (2) reintegrating of both offender and victim, (3) adopting an inclusive approach to justice involving all persons, support people, and community members necessary, all coming together to (4) ensure the reparation of any harm produced by the offence, while at the same time (5) holding the offender responsible for their actions in a meaningful way. In what follows I will elaborate on these principles.

Addressing victim needs is central to the restorative process. As Howard Zehr argues, victims “need to know that what happened to them was wrong and undeserved” (Zehr, 1990, p.191). The current institutional structure of the legal system means that the victim has a very limited role in the justice process. In fact, the role is often limited to that of a witness at a trial, with the state taking on the role of the victim in criminal proceedings. Victims are sometimes asked to give a victim impact statement in court and in some cases are provided restitution through the court process, but these things are not guaranteed (Wemmers and Canuto, 2002). Advocates argue that restorative justice offers a more satisfying option for victims than the conventional justice system (Roach, 2000).

Reintegration is a concept developed by John Braithwaite in *Crime, Shame, and Reintegration* (1989). Braithwaite, a leading international advocate of restorative justice, argues that societies that employ reintegrative shaming in their treatment of criminal behaviour have less crime than those that employ a stigmatizing shame. The latter response forces the criminal to form further attachments with criminal subcultures

(Braithwaite, 1989). Shaming, according to Braithwaite is “a means of making citizens actively responsible” (Braithwaite, 1989, p. 10). Reintegrative shaming “is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant” (Braithwaite, 1989, p.101). This difference, according to Braithwaite, essentially separates effective punishment from ineffective punishment. Our current model of criminal justice does not provide many opportunities for a reintegrative component. In fact, the current justice process uses a stigmatizing approach (Braithwaite, Ahmed and Braithwaite, 2006) formally labeling offenders as “criminal” and promoting their rejection from society. Allowing the offender to be shamed and then reintegrated back into society has become a key distinguishing feature of restorative processes.

Some restorative justice theorists believe that reintegration is also important for victims. Llewellyn and Howse (1999) highlight the importance of the victim in a restorative approach to crime, arguing that the victim also requires reintegration back into society. Efforts need to be made to ensure that the harms, which may include a feeling of alienation from the community, are addressed. According to restorative justice theory, community members can contribute to the reintegration of victims back into the community. This is one reason why members of the larger community play such an important role in a restorative approach to crime. Indeed, many restorative justice advocates cite the famous Nils Christie article, “Conflicts as Property” (1977), as a major contribution to the restorative justice movement. Christie (1977) argues that the state has stolen conflicts from victims in criminal matters. Restorative justice seeks to change the



existing relationship between crime and the state, shifting “backwards” and allowing individuals and communities to take the place the state currently occupies.

The involvement of the victim, offender, and community in the restorative justice process is indicative of its inclusive approach to addressing harm. As Llewellyn and Howse (1999) note “a restorative justice process must be the product of negotiation between the parties with a stake in the matter” (p.93). Restorative justice defines crime in terms of the harm that results from the act, including the harm experienced by victim, offender and community. The underlying assumption, that wrongdoing is more than simply an act committed by an individual against an individual (or the state), is at the core of this approach. The current system has room only for lawyers while victims and others are relegated to the role of witness in criminal trials. In contrast, restorative justice offers a process, which allows for all those affected by the crime to be directly involved in both defining the harms and deciding on the remedy and consequences needed to address them.

Another important component of a restorative approach is repairing harm which, given the inclusive nature of restorative justice, must incorporate all relevant parties and any relevant harms (Llewellyn and Howse, 1999). Perhaps the best way to conceptualize reparation in the context of restorative justice is by comparing the definition of justice according to retributive justice. Zehr (1990) contends that a definition of justice through a retributive lens becomes a question of “what can be done to the offender?”, whereas a restorative approach asks “what can be done to make things right?” Further, the current retributive justice framework provides a very limited number of outcomes, the most

common being punishment. Reparation is typically limited to court, ordered restitution, which is not even guaranteed (Wemmers and Canuto, 2002). Restitution in restorative justice is flexible and defined by those with a stake in the matter. With restorative justice processes, reparation can take many forms, from something as basic as monetary compensation to an apology letter for the victim.

The process of repairing harm offers an opportunity for the offender to be held accountable in a meaningful way, in part due to the flexibility afforded by restorative justice. This is something many argue our current legal system does not accomplish. Holding the offender accountable or responsible can be achieved in a number of ways, including reparation. Accountability can be enhanced by consequences based on needs identified by the relevant parties, allowing for a great deal of variation in processes and issues specific to the case being considered. In repairing the harm, the offender is given the opportunity to take responsibility for their actions and make amends in a way that takes into consideration the needs of the victim and the community.

A significant obstacle facing the success of restorative justice in our modern society is the way in which the goals of restorative justice differ from the dominant justice institutions. As we have seen through a close examination of core principles, restorative justice aims to change the relationship between individuals (victims, offenders), community and the state. This argument rests on the idea that at some point in history there was a shift in the way criminal matters were dealt with, making them a public rather than a private matter and concluding that restorative justice is a way of returning the conflict to its rightful owner. It is for this reason that this thesis begins by

examining the historical relationship between citizens, communities and the state.

Contextualizing this relationship within a broader history will help clarify the scope of what the restorative justice movement is trying to accomplish and help to understand the significance of the shift in public opinion said to be required for the successful implementation of restorative justice.

### **Concluding Thoughts**

This historical survey has served to demonstrate that matters of justice are not static but are a product of evolving social and political structures. The examination of core restorative justice principles has shown that a move toward restorative justice will require a shift in the relationship between citizens, communities and the state in the justice process. A shift towards restorative justice cannot simply be seen as a shift back to old forms of justice. This brief exploration has demonstrated that these relationships are not static and that the necessary changes are possible. Most importantly, this review has shown that changes need to be considered within the structures and power relations that make up our current society.

The structure of society in ancient times did not have the same social and political structure as our current society; power was dispersed quite differently. As society has evolved so has society's response to conflict and so has the relationship between citizens, community and the state. In particular, it is my contention that modern criminal justice practices are closely linked to the creation of a more centralized state structure.

Understanding this dynamic helps us to understand that, while restorative justice can be seen as a return to traditional forms of justice, it also a theory of justice that exists within

a specific social and political context and which is being implemented within certain political institutions— in the current Canadian context, the criminal justice system. This leads me to question how restorative justice will be received within the current social and political structures. Specifically, what is the current social and political context and how does restorative justice fit within it?

A move towards restorative justice is often said to require a change in the way the public views justice (Zehr, 1990). Others explain that restorative justice is best seen as a return to traditional forms of justice (Llewellyn and Howse, 1999). The question of whether restorative justice presents a new or old form of justice is not necessarily one that can be answered simply. In fact, I would argue it is not the question which is most important in considering the viability of restorative justice in current times. Given that the state currently holds a virtual monopoly over justice functions—and individuals and communities have had a limited role at best—this relationship needs to be examined in order to better understand the potential for restorative justice. The purpose of this research is to explore the relationship between citizens, community and the state, specifically, in relation to the rise of restorative justice in criminal justice practice. In particular, the role public opinion could play in establishing a place for restorative justice in our current society. In the coming chapters I will explain the significance of public opinion in establishing a level of legitimacy within modern criminal justice institutions and the reasons why public opinion is critical to the viability of restorative justice within the justice system. In the next chapter I will draw on a body of theoretical literature which offers both an extension of the historical context provided here as well as some

new insight into the structure of our governmental systems and the place of restorative justice within those structures.

## CHAPTER THREE: THEORETICAL LITERATURE

Following from the historical overview presented in the previous chapter, I now turn to a body of literature that provides a theoretical look at the more recent history of justice matters and the relationship between the state, citizens and community. Specifically, this section will examine the theoretical underpinnings of my research, identifying and defining the main concepts under investigation. This section will also serve as an extension of the historical survey because questions about the way citizens, community and state intersect is central to a body of scholarship called governmentality. Through the lens of governmentality studies I will examine the complex relationship created between citizen-community and the state and look at how this relates to restorative justice. I will begin with an introduction to the main concepts within the governmentality literature. Second, I will focus on more recent works that have explored advanced liberal rationalities of government. Last, I will examine how the governmentality literature leads me to ask a number of questions with respect to the viability of restorative justice within our current system of crime governance.

### **Governmentality: A change in the way we think about government**

The studies of governmentality initiated by Michel Foucault changed the way scholars conceptualize government and governing. Foucault first introduced this subject in his lecture entitled "Governmentality" (Foucault, 1991), and later expanded his discussion in works on the *History of Sexuality* (1985). Foucault focused on what he termed the *ethos* of government, explaining that, "society was the product of a mutation in the demands of governmental rationalities" (Barry et al., 1996, p.5). Governmentality refers to a way of

conceptualizing government in which the central focus is on the distribution of power. Governmentality addresses both governmental ways of thinking (the *rationalities of government*) and the ways of acting (the *technologies of government*) (Dean, 1999).

As was the case with much of his work, Foucault's discussions on governmentality centered on notions of power and understanding the ways in which governmental power operates through individuals and not simply through a formal centralized state. Governmentality scholars explain that governmental power is dispersed through different groupings of individuals, knowledge and techniques. As Garland (1997) explains "complex assemblages (composed of specific combinations of agents, knowledge, techniques and practices) are thus pieced together in an attempt to translate the new rationalities and programmes into practical effects" (p.198). From this perspective, "the state" and "government" are not single identifiable entities. Rather, they exist as an intricate web of power relations within a society that is formed when governmental rationalities are translated into technologies for action. In essence, the broad project of governmentality studies is concerned with the complex web of power relations that are created in the space between citizens, communities and the state.

The study of government and political rationalities initiated by Michel Foucault offers some insight into issues of the state's role in criminal justice. As we saw in the previous chapter, our current criminal justice system is the product of gradual changes in the role of the state, community and citizens in the justice process, culminating in the creation of a set of centralized administrative institutions such as the police, courts and corrections. Foucauldian scholars have added some interesting theoretical interpretations

to this history. Drawing from Foucault, Rose (1999) argues that the last 200 years has been marked by a change in the way many western societies are governed, specifically through changes in governmental rationalities. Foucault himself discussed the Machiavellian notion of sovereignty and the “power to rule,” explaining that systems of government have historically developed in which power was centralized (Foucault, 1991).

As Woolford and Ratner (2008) explain:

Foucault shifts emphasis from power as a mode through which individuals are dominated and controlled by centralized structures of law and government, to power as a set of techniques and relations through which the subject is produced. (p.20)

Here they refer to Foucault’s argument that the new form of governing is characterized by a decentralized state. By decentralized state, however, he was not necessarily referring to a physically de-centred state. Rather, this idea refers to a society in which governmental power is de-centred through a complex web of interacting governmental technologies working within the framework of a particular governmental rationality. In terms of the topic of this thesis, when looking at the government controlled criminal justice system, we need to look beyond the obvious institutions, such as police and the courts, towards political and community-based organizations.

Governmentality scholars use the term “governmental rationalities” as a way of talking about these decentered forms of governing. “Governmental rationalities” provides a way of reconceptualizing the way we think about the workings of government. Complementary to this is what Foucault terms “technologies of the self”. Technologies of the self refer to the various ways through which individuals are led through a process of “self-governing.” As Woolford and Ratner (2008) explain, “governmentality relies on



citizens' own self-regulation as they come to internalize societal controls, and to play an active role in monitoring their own conduct and being responsible for their activities" (p.23). This process of self-governing can be seen in many aspects of social life. For instance, an often cited example is the increasing trends towards self-help such as Alcoholics Anonymous (Woolford and Ratner, 2008). Through programs such as this, individuals are taught to take responsibility for their own actions and enact changes that make them better citizens. This concept is important when talking about restorative justice because scholars have noted the potential for restorative justice to promote self-governing, as we will see in depth below.

In his introduction to the concept of governmentality, Foucault argued that we have experienced a change in governmental rationalities. In recent years Rose and Miller have built on Foucault's work, focusing specifically on the shift away from welfare-based governments towards forms of advanced liberalism (Miller and Rose, 1990; Burchell, 1996; Rose, 1996; Rose, 2000). I have chosen to use the term advanced liberalism because it encompasses a broader set of changes in rationality than other terms as we will see in greater depth in the next section. As we will also see in the next section, this shift in governmental rationalities and the various technologies of government associated with them can be used in exploring issues of justice and punishment. Most importantly for this thesis, these rationalities will be used to help understand people's views about justice and draw conclusions about what they mean for restorative justice.

### **Rationalities of Government: Recent developments**

One of the more notable contributions to discussions of governmentality and crime has been David Garland's *The Culture of Control: Crime and Social Order in Contemporary Society* (2001). Garland argues that, in the criminal justice arena, we have witnessed a shift away from penal welfarism towards a "culture of control" as part of broader changes in the art of governing. The welfare state was characterized by the active role of the state in the welfare of its citizens. It is premised on notions of equality, where it is seen as the role of the state to provide a wide range of programs and services such as health care and social assistance in order to ensure equality amongst citizens. As Rose (1996) explains, this shift towards advanced liberal forms of government has meant changes in the relationship between citizens and the state:

Individuals are to be governed through their freedom, but neither as isolated atoms of classical political economy, nor as citizens of society, but as members of heterogeneous communities of allegiance, as community emerges as a new way of conceptualizing and administering moral relations amongst persons (p. 41)

Thus, in line with a reduction in the scope of government, advanced liberalism characteristically develops techniques through which responsibility is shifted away from the state and onto the individual. This technology of responsibilization is seen as one of the key elements in the shift away from a welfare-based state towards forms of advanced liberal government (Rose, 1996).

Another key element of advanced liberalism is the emphasis on empowering the community rather than simply governing the social (or the individual). Theorists, however, argue that community empowerment is actually a way for the state to maintain power such that "community" becomes another tool of government (Rose, 2000). Others

have noted that we are actually seeing increasing trends towards individualism (Beck, 1994) related to a shift from governing a society to governing individuals, with the underlying assumption being that individuals or citizens are responsible for their own actions (O'Malley 1997). This individualization has the potential to work against the ethic of restorative justice, which sees crime in terms of harm to both individuals and communities. As Pat O'Malley (1997) explains:

Post-social political rationalities constitute their subjects not as members of an overarching social whole, shaped by social conditions and to be governed through social interventions, but as autonomous individuals, responsible for their own fate...and thus with personal responsibility for their actions (p.28).

Here, O'Malley is directing our attention to the shift from governing a society to governing individuals, with the underlying assumption being that individuals or citizens are responsible for their own actions. This shift has significant consequences for not only the types of programs and services provided by governments —such as criminal justice programs— but also for the way services are delivered. It also raises a number of questions specific to restorative justice as a criminal justice program and how the public will be involved in the success of these programs.

### **Restorative Justice as a Technology of Government and of the Self**

Looking at restorative justice through the lens of governmentality leads me to consider three issues. First, some scholars who have theorized broadly about informal justice practices, and more specifically restorative justice, have explained restorative justice as a technology of government—one that draws from an advanced liberal governmental rationality (Matthews, 2005; Woolford and Ratner, 2008). As noted in the previous section, much of the recent developments in governmentality theory have focused on

examining the shift from welfare based rationalities of governing to forms of advanced liberalism. Institutionalized restorative justice programs, such as the one in Nova Scotia, are community-based programs that operate within a broader criminal justice framework, relying on the police, courts and corrections for referrals. Within the framework of advanced liberalism, this de-centering of services into the community is in line with the goals of fiscal responsibility and scaling back of governmental services. This has been termed by governmentality scholars as “governing at a distance” (Rose, 1999). A number of scholars have begun to explore forms of informal justice, including restorative justice, within this governmentality framework (Matthews, 2005; Gray, 2005; Woolford and Ratner, 2008). From their perspective, restorative justice programs are an extension of governmental power. Drawing on the concepts introduced by Foucault, restorative justice can be seen as one of many governmental tools through which advanced liberal political rationalities are put into action.

Second, on a more individual level, restorative justice can be seen as a means of promoting self-government. Specifically, Woolford and Ratner (2008) talk about the dialogue process within restorative justice as having the potential to act as a technology of the self, stating: “participants are engaged in a project of self-formation set within the parameters of restorative justice.” Through a dialogue of “healing,” participants are given the opportunity to become “better” citizens in conformity with community (and thus governmental) norms and rationalities. Understanding how restorative justice works as a mode of governance on a more individual level is important, given the focus of this thesis is on public opinion.

In addition, restorative justice provides an interesting case for governmentality because, as some argue, it draws on two different forms of governing (Gray, 2005). On the one hand, its promise of holding the offender responsible in a meaningful way ties into the shift towards advanced liberal forms of government. Restorative justice does this in several ways. As Woolford and Ratner (2008) point out, restorative justice participants go through a process of self-help in the course of taking responsibility for what they have done. Additionally, the focus on community in restorative justice theory follows trends towards the de-centering of government programs and services and the empowerment of the citizen, community and the self. On the other hand, the emphasis on restoration and reintegration within restorative justice theory is reminiscent of penal welfarism (Gray, 2005) where the state takes responsibility for the individual involved in the criminal activity and helps them become better citizens. This dual rationality of restorative justice has the potential to open new understandings of governmentality and informal justice practices.

While a great deal of writings focuses exclusively on rationalities and technologies of advanced liberalism, it is important to understand that these rationalities do not exist in isolation from other forms of governing. In fact, Foucault and other governmentality scholars reject the idea of dichotomies or binary ways of thinking (Rose, 1999). As Rose explains “we are seeing the proliferation of forms of politics and of types of contestation which cannot be calibrated in terms of the dichotomies of traditional political thought.” (p.2) Foucault proposed that forms of power could be conceptualized in terms of a triangle of sovereignty-discipline-government. Rather than societies

evolving from one type of power to the next, he viewed these forms of power as coexisting simultaneously (Garland, 1997; Rose, 1999). In terms of governmental rationalities, this means that a shift from welfare governing to advanced liberalism is not absolute; rather, the two rationalities can exist simultaneously and continuously through a gradual process of transformation. This view also has important practical implications for the way we study governmental technologies and the need to look specifically at the interplay between different rationalities and how they influence each other in practice. As a result, restorative justice can be seen as both a technology of government and a technology of the self with potentially different governmental rationalities at work through the practice of restorative justice. Using governmentality terms, more specifically, this thesis aims to theoretically understand institutionalized restorative justice programs as both a technology of government and a technology of the self.

As Dean (1999) explains, governmentality scholars seek to answer the following set of questions: “what forms of thought, knowledge, expertise, strategies, means of calculation, or rationality are employed in practices of governing?... How do these practices of governing give rise to specific forms of truth?” (p.31). In particular, I will explore how the interplay between different rationalities of government are playing out through the theory and practice of restorative justice. One of the objectives of this thesis is to understand how people view the ideal relationship between state, citizen and community. What governmentality literature offers is insight into the potential complexities and various manifestations of power that exist in the space between the state, community and citizen.

## **CHAPTER FOUR: EMPIRICAL LITERATURE REVIEW**

Socio-legal scholars have focused a significant amount of attention on the importance of public opinion in ensuring the efficacy of the justice system (for example: Roberts and Doob, 1989; Kaukinen and Colavecchia, 1999; Roberts and Stalans, 2000; Roberts and Hough, 2005; Roberts, Crutcher and Verbrugge, 2007). Roberts (2004) argues that, if the public lacks confidence in the justice system, they will be less likely to report crimes, thus decreasing the effectiveness of the process. Not only are crimes left unreported, but both victims and other witnesses are crucial to ensuring the offender is successfully prosecuted by providing evidence and testimony. Furthermore a lack of confidence in the justice system may work to discourage people from participating and limit the effectiveness of the justice process. A lack of active participation could work to undermine restorative justice programs because community involvement is one of the key features differentiating it from a retributive approach to justice (McCold, 1995; Llewellyn and Howse, 1999; Weisberg, 2003). Understanding community and public support for restorative justice is therefore critical to increasing overall public confidence in the justice system. With the number of restorative justice programs growing, increasing confidence and participation is particularly important. (Corrections Services Canada, 1998)

Given the importance of public opinion to the justice system, this chapter will identify the principles of justice that are discussed in the public opinion literature to assess whether the public supports the principles of justice underlying restorative justice. A great deal of public opinion research has focused on issues of confidence and the justice system (See Roberts, 2004 for a comprehensive review of this research). In

addition, a substantial amount of research has focused on public knowledge of the justice system (see Roberts, 1994). Finally, a considerable amount of attention has been paid to exploring the public's views on the sentencing process. Some scholars have explained the importance of this research by explaining that "the sentencing decision is at the apex of the criminal process" (Roberts and Stalans, 2000, p. 198). With this in mind, and given that this literature hones in on principles of justice, my literature review will focus on studies that have measured the public's views on the aims and purposes of justice and sentencing, and not issues of confidence or knowledge. Table 2, below, summarizes the main studies that will be discussed in the literature review that follows.



**Table 2. Summary of Literature Related to Public Opinion and Restorative Justice**

<b>Study</b>	<b>Location</b>	<b>Methods</b>	<b>Sample Size</b>
Gandy and Galaway, 1980	South Carolina, U.S	Telephone survey	N= 500
Galaway, 1984	New Zealand	Mail survey	N= 1200
Canadian Sentencing Commission, 1987 (Roberts, 1988)	Canada	Gallup Poll	N= 1062
Doob and Roberts, 1988	Canada	Gallup Polls (1983-87)	
Adams, 1990	Canada	Survey	N= 2600
		Focus Group	10 focus groups
Bae, 1992	Minnesota, U.S.	Mail survey	N=2177 public N= 253 criminal justice officials
Baron and Hartnagel, 1996	Winnipeg, Canada	Phone Interviews	N= 499
Belgave, 1996	New Zealand	Focus groups	16 focus groups
Gorczyk and Perry, 1997 (Same as Doble and Greene)	U.S.	Phone Interviews Focus groups	N=400 2-3 Focus Groups
Stuart and Vermeulen, 1998	Whitehorse	Interview	N= 309
Atlantic Community Justice Project, 1999	Atlantic Canada (N.S., N.B., PEI, NFLD)	Mail survey	N=87
Holtquist, 1999	U.S.	Survey	N= 357
Doob, 2000	Ontario	Survey	N= 500
Tufts, 2000	Canada	GSS	N= 25, 876
Tufts and Roberts, 2002	Canada	GSS (Vignettes)	N= 25, 876
Roberts and Stalans, 2004	Canada, US, International	Various, mostly survey	Various studies
National Justice Survey 2007 (Latimer and Desjardins, 2007)	Canada	Telephone survey	N = 4502
Roberts, Crutcher and Verbrugge, 2007	Canada-National	Enviroics Poll	N= 1501
		Internet Panel (Vignettes)	N= 2343
Sprott and Doob, 1997	Canada	1993 General Social Survey (GSS)	N=10,385

**Punitiveness in Public Opinion**

The most persistent finding in public opinion polling is the public's belief that sentences are too lenient, leading some to suggest that the Canadian public is quite punitive (Adams 1990). Surveys conducted for the Canadian Sentencing Commission (Doob and Roberts 1988; Roberts 1988) found that the majority of the public thought sentences were too lenient. A recent review shows that Canadians continue to hold this belief: almost three quarters (74%) of their survey participants thought that sentencing practices were too lenient (Roberts, Crutcher and Verbrugge, 2007). Other smaller studies have made the same findings (Adams 1990; Doob 2000). Similar trends have also been noted in international research (Innes, 1993; Hough and Roberts, 1998; Hutton, 2005; Roberts and Hough, 2005). This finding has remained consistent over several decades of polling (Roberts, Crutcher and Verbrugge, 2007).

Findings of a punitive public have also been consistent in research focusing on youth crime. One study conducted concluded that respondents were highly punitive with respect to punishing young offenders. A full 78 % of respondents agreed "that youth courts have become too lenient" (Baron and Hartnagel, 1996: 204).

**Public Opinion: A more complex picture**

Public opinion is inherently complex and contradictory. In fact, researchers have also found the public to be supportive of alternatives to prison—something that many would associate with non-punitive attitudes. Research has shown that, when the public is asked more specific questions regarding the structure of the justice system, they appear to be less punitive than when they are asked whether sentences are too lenient (Doob and

Roberts, 1988). In one survey, when told that Canadian prisons are becoming over crowded, respondents were presented with two options. The first option presented was to have more prisons built. The second was to have money put into developing more alternatives to imprisonment, such as restitution, community service orders, etc. A majority of respondents (70 %) chose the second option presented.

Additional research has confirmed that the Canadian public is open to alternatives to prison (Adams 1990; Doob, 2000; Tufts 2000). Adams (1990) found that this option was particularly attractive for non-violent offenders. Interestingly, support for alternatives appears to be slightly higher for young offenders than adults: One study found 79 and 66 percent of people supported alternatives for young offenders and adults, respectively (Doob, 2000, p.331). The 1999 General Social Survey found that 68 percent of Canadians chose the use of prison for adults compared to 44% for youth (Tufts, 2000). If the public views sentences as too lenient, the logical conclusion is that they would want to see more people in prison. These studies, however, show that public opinion may not follow this logic and, in fact, these findings may be complex rather than simply contradictory. These studies also show that the public may already have an understanding that punishment does not *necessarily* mean prison, something that could work in favour of those trying to implement restorative justice programs.

This conclusion is further evidenced by research that shows the public to be supportive of the diverse principles of sentencing laid out in s.718 of the Criminal Code. In 1996, Canada formally codified and specified particular objectives of sentencing. Through this reform the criminal code now identifies the following purposes in punishing

offenders: denunciation; deterrence (both individual and general), incapacitation, and rehabilitation. Subsections 718.2(e) and (f) of the Criminal Code include two newer sentencing principles, which incorporate some restorative elements: “to provide reparations for harm done to victims or the community” and “to promote a sense of responsibility in offenders and acknowledgement of the harm done to the victims and to the community.” Studies show that the public wants to accomplish many things in the sentencing process (Roberts 1988) and they tend to say that all the principles, even contradictory ones, are important (Doob 2000). For the purposes of the discussion that follows I will begin by reviewing studies which have looked at public opinion of the more traditional principles of sentencing (denunciation, deterrence, incapacitation and rehabilitation) and then move on to focus on restorative principles (reparation and responsibility/accountability).

Early polls showed that Canadians were supportive of deterrence as a principle of sentencing, especially for less serious offences (Roberts, 1988). More recent research conducted in Ontario reported a similar finding (Doob, 2000). This trend, however, appears less equivocal with the most recent research that also provided the more restorative principles as possible options (Latimer and Desjardins 2001; Roberts, Crutcher and Verbrugge 2007). When asked to rate sentencing principles in this context, respondents were less supportive of deterrence and more supportive of holding the offender accountable and of reparation. These findings suggest that the public may be open to restorative justice when given the option; this could work in favour of restorative justice programs.

As we have seen in people's willingness to consider alternatives to prison, incapacitation is not a priority for the public, especially for minor offences. In the surveys done for Canadian Sentencing Commission, incapacitation was given the lowest rating of importance in relation to minor crimes. It was, however, seen as more important when dealing with serious offenders. More recent research has found even less support for incapacitation (Latimer and Desjardins, 2001; Roberts, Crutcher and Verbrugge, 2007). Doob (2000) has also found that incapacitation was generally rated as less important for youth. Given that many of the restorative justice programs offered in Canada are for young offenders, this willingness to consider non-prison alternatives for youth is encouraging for those who implement restorative justice.

Rehabilitation has enjoyed moderate public support in recent research. Residents of Ontario chose rehabilitation as the second most important principle of sentencing, and rated it as even more important when addressing youth crime (Doob, 2000). The National Justice Survey (Latimer and Desjardins, 2001) found that, when asked to prioritize the Principles of Sentencing, rehabilitation was deemed most important by the largest number of respondents. Other research has found less support for rehabilitation (Roberts, Crutcher, and Verbrugge, 2007).

Denunciation appears to be the least important principle for Canadians. Research has found little support for this principle generally (Latimer and Desjardins, 2001; Roberts, Crutcher, and Verbrugge, 2007); however, it is seen as more important for youth sentencing (Doob, 2000).

Recent polls and surveys have found support for the two most restorative

principles of sentencing in the Criminal Code: reparation and promotion of a sense of responsibility in offenders. Results from the 2007 National Justice Survey found that respondents were generally more supportive of these principles than the more traditional ones (Latimer and Desjardins, 2007). Similarly, results from two national surveys found that a large majority of respondents (84%) rated these principles as “very important” (Roberts, Crutcher and Verbrugge, 2007). When a similar question was asked as part of the Canadian Sentencing Commission research in 1985, individual and general deterrence were chosen as the most important sentencing objectives. Interestingly, when given the options in the more recent 2007 study, the public overwhelmingly supported the more restorative principles. These finding shows a very clear openness to elements of restorative justice on the part of Canadians when these options are presented to them.

These surveys asking for public reaction to the principles of sentencing are among the only examples of research in Canada that probes into the public’s views of restorative justice principles. Some international research has looked at principles more directly associated with restorative justice finding a high level of support for restitution and reparation (Bae, 1992; Gandy and Galaway, 1980; Roberts and Stalans, 2004), although not synonymous only with restorative justice. Both are possible outcomes of a restorative process. As such, the public’s acceptance of them can be used as an indicator of their openness to particular restorative justice principles.

Research conducted in Minnesota assessed the general public’s acceptance of the use of restitution as an alternative to prison and found the public to be in strong support of restitution for property offenders (Bae, 1992). Additionally, a New Zealand study found

support for the use of restitution for property offences. Similar studies have also found support for the use of restitution (Gandy and Galaway, 1980; Roberts and Stalans, 2004).

Taken together, these findings demonstrate a significant shift in public opinion. Support for the sentencing principles with restorative elements shows us, that although the public may appear to be punitive in their views, once you explore the nuances, a more complex picture emerges. This view that sentencing is too lenient in Canada is not necessarily leading people to want more prison sentences; in fact, there is a strong willingness to consider alternative options, even ones which include some restorative elements. Others argue, however, despite findings which support the use of principles such as reparation or restitution, there remains a lack of research looking at the public's openness to a *process* which combines mediation and restitution (Lee, 1996). With the prevalence of restorative justice in recent years, researchers have begun to focus attention in this area.

### **Restorative Justice and Public Opinion: What do we already know?**

Despite an extensive academic literature on restorative justice, little research has explored public perception or support for restorative principle or practices (Roberts and Stalans, 2000). As we have seen thus far, the popular perception of a punitive public is a simplistic view of a complex picture. While the public may believe that sentences are too lenient, they do not necessarily think prison is the answer and are open to alternatives, at least to a degree. In addition, the public has been found to support some general restorative principles such as restitution, reparation and accountability. This finding, however, does not tell us if the public would support restorative justice as a more holistic

process. Some researchers have begun to ask these questions more directly and have found the public to be generally supportive of restorative justice principles, but that they may also have some concerns around specific restorative justice processes.

Much of the existing research in this area has been conducted outside of Canada. Roberts and Stalans (2004) have completed a comprehensive international review of public opinion research probing into support for and knowledge of restorative justice options. The stated purpose of their review was to “determine which elements of this paradigm attract public approval, and which features are likely to provoke public opposition” (Roberts and Stalans, 2004, p.318). They generally found support for, but limited knowledge of, restorative justice (Roberts and Stalans 2004). Their review found that the people’s support of reparative sanctions, such as restitution and community service over prison, was tempered by the seriousness of the offence. As Roberts and Stalans (2004) note, “when the offense in questions involves violence, particularly sexual violence, the public’s enthusiasm for restorative options wanes” (p.329).

Some research has been conducted asking about restorative justice more broadly and even looking at specific restorative justice processes and programs. A 1994 study, conducted in New Zealand, used focus groups to understand the public’s acceptance of restorative justice (Belgrave, 1996). The discussions were broken down into two parts. The first part was concerned with attitudes towards the current justice system in New Zealand and their view of an ideal justice system. After this discussion, participants were briefly told about the ideals of a restorative approach. They were then asked questions to get their initial reactions. Next, a more thorough description of restorative justice was



given, and group members were asked their opinions about specific aspects of restorative justice. The study found the New Zealand public to be hesitant of certain procedural aspects of a restorative approach. In particular, concern was expressed with respect to the willingness of the victim to meet the offender. Overall, however, the public was supportive of a restorative approach to crime.

Research has found support for the way in which restorative justice defines crime as a violation of relationships (Holtquist, 1999). Holtquist (1999) also found support for several other dimensions of restorative justice, including the importance of considering the needs of victims in the justice process. Additionally, more than half of the respondents recognized that the community is also affected by crime and there was limited support for the community also taking responsibility for crime (Holtquist, 1999). These are all important questions that more specifically distinguish a restorative approach to justice from our current retributive framework.

Research also suggests that victims and offenders may be supportive of restorative justice programs. Novack and Hudson (1980) found that victims and offenders supported the use of programs that bring victim and offender together, something common to restorative justice programs and processes. In addition, research conducted by Herman (2005) found that victims emphasized harm that resulted from a crime rather than seeing it as an abstract violation of the law. They also downplayed the place of punishment and emphasized the significance of community acknowledgement and shaming of the offender.

Several studies have also been conducted aimed at examining public opinion of

specific restorative justice initiatives. A Vermont study, conducted in 1994, used a combination of focus group and survey data to determine what the public wanted to get from different aspects of the criminal justice system (Gorczyk and Perry, 1997). The study found that, in relation to the offender, the public was looking for restitution and restoration, two principles closely linked to restorative justice theory and practice. In addition, the study found people to be supportive of Community Reparative Boards, which are unique to Vermont and based on the principle of restorative justice. Cullen et al. (1999) found similar results in a 1996 National poll and a 1998 New Hampshire poll which found support for the principle of restitution.

A limited number of studies have asked questions about who should have the responsibility for the justice system. The results suggest that the public may be willing to accept restorative justice. The Canadian Sentencing Commission asked where respondents think the main responsibility lies in reducing crime. The largest proportion of respondents (47%) indicated that it was the responsibility of “society generally” (Roberts, 1988). This response was in comparison to other options such as police, courts or corrections. Another more recent, but smaller study, asked where the responsibility lies for the justice system. Over half (55 %) the sample chose a combination of federal, provincial, municipal governments; community members; policing organizations; non-profit organization and for-profit organization (Atlantic Community Justice Project, 1999). This shows a solid understanding of the need to work together and that justice matters are not the sole responsibility of the government or state. Having a public which accepts responsibility for their role in the justice process will be important for restorative

justice programs, which rely on the direct participation of the public.

Bringing all this information together shows us that there is reason to believe that restorative justice programs will be welcomed by the public. There seems to be strong support for the principles of restitution and reparation. There is, however, less clarity as to whether people will support the process of restorative justice, which I would argue is more than the sum of principles that have been discussed here. Given that restorative justice programs are new and the public is still being made aware of them, a number of questions remain as to whether the public will support some of the more nuanced changes proposed by restorative justice. It is these questions that I hope to begin answering in this research project.

### **Where does this research fit?**

Understanding public opinion depends on attending to a number of issues (Doob and Roberts, 1988; Doob, 2000; Roberts and Stalans, 2000; Roberts, 2004; Marinos, 2005), and at least four important observations can be made on the basis of this literature. First, there has been an overwhelming focus on obtaining quantitative public opinion data, aimed at generalizing the results to larger populations. Few studies have taken a qualitative approach aimed at gaining a more nuanced understanding of public opinion. Researchers who used focus groups (Adams, 1990, Belgrave, 1996) noted the value in obtaining in-depth, detail rich information as opposed to generalizable results.

Second, justice and related concepts are clearly complex and multidimensional (Sprott, 1999; Swift, 1999; Marinos, 2005). In particular, this literature has pointed to the need to ask questions which take these complexities into consideration. In addition,

research has shown that members of the public are often unaware of non-prison options (Hough and Roberts, 1999; Tufts and Roberts, 2002), and may lack substantive knowledge with respect to restorative justice (Roberts and Hough, 2005).

Third, despite the existence of a large body of literature looking at public opinion on most aspects of the criminal justice system, Roberts and Stalans (2004) have noted a lack of research examining public opinion of restorative justice. The research that does exist in this area has shown support for restorative justice principles. This support has ranged from certain principles to specific programs, which draw on restorative justice principles. Existing research, however, has focused primarily on the use of restorative justice as an alternative to or within the current retributive paradigm.

Fourth, to date, there has been no research aimed at exploring issues of governance in the citizen, community, state nexus of justice processes. The existing public opinion research points to the complexity of public opinion and the theoretical literature have led me to question issues of the public's opinion of restorative justice, looking at restorative justice as a mode of governance. Finally, this existing body of literature points to openness on the part of the public to alternatives to prison such as restorative justice. Given, however, the lack of research looking more specifically at public opinion of restorative justice as a comprehensive theory of justice, more work needs to be done to assess people's views of this emerging alternative to our current criminal justice framework. Specifically, this thesis will examine how the change in relationship between state, community and citizen proposed by restorative justice is viewed by the public.

## **CHAPTER FIVE: RESEARCH DESIGN AND METHODOLOGY**

The central focus of public opinion research has been to obtain quantitative data aimed at generalizing the results to larger populations. Few studies have taken a qualitative approach aimed at gaining a more nuanced understanding of public opinion. As a result, our understanding of what the public thinks about justice issues is limited to a general or superficial understanding of whether people support particular policies. Researchers who have used focus groups have noted the value in obtaining in-depth, detail-rich information (Adams, 1990, Belgrave, 1996). This approach allows researchers to ask more in-depth questions about why people support certain policies and not others. Drawing on this particular strength, the data for this thesis was gathered through the use of focus groups and town halls.

The focus of this project is on exploring restorative justice as a mode through which citizen, community and the state intersect and interact in a complex process of governing. The theoretical works explored in Chapter Three have shown the process of governing to be intricate, involving complex webs of power relations. Exploring questions of governance required a methodology that can get at the in-depth information about people's view, information that goes beyond whether people simply support one policy or another. This chapter will explain the relevance of the focus group methodology for answering my research question, and discuss the specific methodological issues arising out of this research project.

This chapter will examine three general topics. First, I will review the

methodological literature on focus groups, highlighting the key methodological issues. Second, I will outline the details of the research conducted for this thesis. Last, I will provide a methodological reflection, discussing the main issues encountered in this research project and locating them within the focus group literature discussed in the first section.

## **Methodology**

My decision to adopt a qualitative approach was based on my desire to gain an in-depth understanding of people's views. The focus of this research was on how members of the general public understand and approach justice, with a particular emphasis on the complexities and contradictions inherent in their views; focus groups provide an ideal means of capturing a collective community voice (Hyden and Bulow, 2003; Litosseliti, 2003; Morgan, 1996). There are a number of reasons why the focus group methodology was most appropriate for this particular project. I will begin by briefly discussing the key features of focus groups and then I will move on to a more detailed discussion of the key methodological issues as they relate to this research project.

The use of focus groups in research has been on the rise in recent years, especially in social science research where they have been used to explore people's attitudes and opinions on a wide variety of topics (Hyden and Bulow, 2003). Focus groups are a methodological tool that allows the researcher to examine the views of a group of research participants as opposed to individuals. The groups usually consist of between eight and ten participants who are asked questions on a given topic in an effort to generate conversation. Hyden and Bulow (2003) define a focus group as:

(O)ne example of an *ad hoc* group created by a researcher for certain immediate purposes like to

elicit people's understandings, opinions and views, or to explore how these are advanced, elaborated and negotiated in a social context. (p.306)

This definition, while broad, highlights the social nature of a focus group and highlights the distinction between focus groups and the traditional sociological notion of a group sharing a common identity. Morgan (1996) explains the three key features which highlight this distinction. Of most relevance to our discussion is that focus groups can be clearly distinguished from other naturally occurring groups within society in that focus groups bring a number of individuals together, for the purpose of participating in the discussions.

Focus groups offered a number of advantages for this research project. First, focus groups offer a socially-oriented research procedure. One of the key features of focus groups, which distinguish it from other data collection methods, is the ability to examine attitudes as they are formed within a social context, using the group interaction to generate data (Barbour and Kitzinger, 1999).

Second, focus group research allows for insight into complex issues, which would be difficult to capture in a written survey or questionnaire. Given the abstract and complex nature of my research questions, this was especially important for this project. As previously mentioned I was not interested in assessing the percentage of people who support restorative justice, or interested in adding to the public opinion literature, rather, I am interested in more nuanced questions about the citizen-community-state relationship.

Third, because focus groups allow for the use of less structured questions they also allow the moderator to obtain clarification and probe participants for additional

information. Given the exploratory nature of my research and the known complexities of public opinion, being able to obtain clarification was critical to meeting my research objectives. A review of public opinion research in Chapter Three showed that while the public has a high interest in issues of criminal justice, they have a low knowledge about the actual workings of the system (Roberts and Doob, 1987; Roberts and Hough, 2005). With this in mind, it was useful to be able to clarify issues and information with participants to ensure that I was getting a deeper sense of their views.

While these features of focus groups were important in relation to my research, the focus group as a method is not without limitations. The most significant limitation associated with focus group research is the fact that the sample size is limited and the data is not generalizable. As Adams (1990) noted, focus groups do not produce data that are generalizable or representative of larger populations. However, this is not something that affects my study because the aim was not to generalize results to bigger populations. In practice, however, there were other problems that arose with focus groups that will be discussed later in this chapter.

In relation to my research project, three main methodological issues require a more detailed discussion: depth and social context; group interactions, dominant voices and the silenced 'other'; and issues specific to vignettes and focusing exercises. These issues are especially important to evaluate in relation to this project and in assessing the significance of the research findings. In particular, this research was interested in the relationships and contradictions people form between different principles of justice.



### *(a) Depth and Social Context*

Focus groups provide a context for capturing the depth not possible with quantitative methods. Existing research has shown the importance of depth in clarifying the complexities of certain issues such as punishment (Doob and Roberts, 1983). Focus group research has become more widely used within the context of qualitative research, largely because of its ability to capture rich detail. Stewart and Shamdasani (1990) note the open response format of focus groups offers the researcher the “opportunity to obtain large and rich amounts of data” in their own words (p. 16). In fact, Morgan (1996) points to research that has compared focus groups and surveys, noting that the biggest difference found was “the ability of focus groups to produce more in-depth information” (p. 137). The nature of my research questions are such that they require a methodological approach to collect detailed and in-depth data on how people understand justice and punishment. Focus groups allowed me to tap into the complexities and contradictions identified in the empirical literature.

As Bloor et al. (2001) explains focus groups provide an opportunity for the researcher to access the ambiguities inherent in group norms. The structure of focus groups provides the opportunity for a unique interaction and conversation between participants. This allows the researcher to see the processes, including the complexities and contradictions, through which group views are created.

In addition, focus groups allow the researcher to examine the meanings behind the collective view of the group (Bloor et al., 2001). This process can involve the elaboration and clarification of certain points as participants attempt to explain their opinions. The

interactions between participants can provide rich detail with respect to possible ambiguities in attitudes and beliefs, and are what make focus group data unique. Examining the interactions and clarifications provides context and adds meaning to attitudes and behaviours. My particular research questions require that I pay attention to these subtle cues.

The social context inherent in focus groups has advantages and disadvantages. The group may replicate social dynamics but they are still artificially contrived groups. On this point, Smithson (2000) summarizes and argues that neither naturally occurring nor so-called artificial sources of data are better than the other. The argument with respect to focus groups is that the group environment is more comparable to other forms of conversation in real life, for instance in a classroom or workplace. Smithson (2000) also notes that participants are aware of their reason for being part of a focus group. The researcher needs to account for this aspect of the group in some way, by analyzing them as if they are discussions taking place in a controlled setting (Smithson, 2000).

Social context is an important component of my research questions. With the focus on understanding community conceptualizations of justice I was not seeking out individual opinion. For my purposes, focus groups more closely approximate a natural setting or social context in which opinions are formed. A common means of demonstrating or attaining a collective view, politically, is through a public forum or town hall meeting. In addition, issues of crime and justice are common topics of informal conversations among friends or colleagues. Focus groups allow for a setting, which approximates these situations.

*(b) Group Interactions and Dominant Voices*

Hyden and Bulow (2003) provide an interesting discussion of some of the issues associated with drawing conclusions from focus group research, arguing that the researcher must be careful to assess whose views are being captured during focus group conversations. On this point Morgan (1996) elaborates:

(W)hat makes the discussion in focus groups more than the sum of separate individual interviews is the fact that the participants both query each other and explain themselves to each other. (p.139)

Here the author illustrates the importance of group interactions, which he frames in a positive light. These interactions also have some methodological limitations.

Determining not only who is talking, but also in what capacity they are talking, is difficult to do when analyzing focus group data. Are participants talking as members of a small group, individuals acting as members of an aggregate group or as participants temporarily sharing a situation? Making this distinction has significant implications for how the data are coded and analyzed and what conclusions can or will be drawn (Hyden and Bulow, 2003). This relates to the notion of “group think”, the idea that views expressed within a group may not reflect the views of all members of the group. While these are important issues to consider, Hyden and Bulow (2003) have also noted the lack of research aimed at understanding the complex interactions within focus groups.

*(c) Issues specific to vignettes or focusing exercises*

To address some of the dilemmas arising out of the group dynamic, Bloor et al. (2001) suggest using focusing exercises as way to focus the group’s interaction on the

research topic. Vignettes are one way to do this. A vignette involves a “short, descriptive sketch of an incident and then presenting it to informants to elicit their opinions and reactions to its contents” (Schoenberg and Ravdal, 2000: 63). This flexible tool can be used in combination with a variety of different methods ranging from surveys, to focus groups and even various types of interviews. As Barter and Renold (2000) note, one of the main strengths of a vignette is that it allows the researcher to discuss topics with participants who may not have direct experience. Vignettes allow the researcher to take potentially abstract concepts and make them concrete for the purposes of the research.

Some researchers have questioned the use of vignettes in making generalizations from beliefs to actions and their ability to accurately define social reality (Barter and Renold, 2000). The argument is that vignettes allow the researcher to learn about people’s general attitudes and beliefs, through concrete examples. The worry is that this may not translate to how they act in real life. However, the very nature of my research is to examine normative beliefs as opposed to actions. For the purposes of this research I used vignettes not as a means comparison or as research tool, but rather a way of focusing the participants’ conversations on something concrete. As such, vignettes offered a unique tool to accomplish this.

A number of practical issues arise from the literature on vignettes, including the need to make them believable and easy to follow. First, Finch (1987) notes the importance of designing vignettes that are believable to the participants. In addition, Finch (1987) points to a need for the researcher to consider not only how the participants will interpret the vignette, but also what information may be filled in by the participant.

In providing a short description of a situation, the researcher has to make decisions about what information to include in the vignette. Undoubtedly there will be components of the story that are filled in by the participant, whether it be details such as the gender of a person or more complicated details like an offender's motivations. This issue is particularly relevant and could impact how participants answer questions. Second, Barter and Renold (2000) discuss the importance of designing a vignette that is easy to follow. I carefully considered these points in designing my vignettes. Appendix A includes the vignettes used in my focus groups.

### **Research Design: Putting methodology to work**

The bulk of the data collected for this research came from four focus group sessions. The groups were held starting in June 2008 with the last one being held in October 2008. Given the exploratory nature of this study I decided not to construct groups in any particular way. The only criterion was that participants were over 18 years of age. Attempts were made to draw on as diverse a range of participants as possible by advertising in several public locations in the Halifax area including universities, cafes, libraries, non-profit agencies, etc. Participants were also recruited by word of mouth. Those who expressed interest in participating were provided with a copy of the information and consent form, which explained the details of the project and what their participation would involve. Appendix B includes copies of these forms.

Each group was formed on the basis of participant's availability and willingness to participate. It often took a number of attempts to set up meeting times that suited all participants, which became an important limiting factor in constructing the groups. It was

no easy task to coordinate a time in which at least five participants could meet. This difficulty was exacerbated by the fact that I ended up with a very small pool of potential participants from which to draw. While a number of people expressed interest in participating, a portion of them were difficult to contact or never responded to emails. Facing these problems, I decided to reapply to the Research Ethics Board in order to seek permission to offer an incentive to research participants. The incentive, ten dollars, did seem to increase interest from student populations. In addition, I chose to have smaller sessions of between four and eight participants per focus group. The decisions to move ahead and conduct smaller focus groups was made keeping in mind my timeline as a master's student and in an effort to expedite the data-gathering phase of the research.

I was able to hold four focus groups in total, with each group including between four to eight participants. Given the way in which participants were recruited, there was a range of age and genders. The focus groups included a range of participants from students, to professionals to retirees. The last two groups included a greater number of students, likely as a result of the incentive. The focus group sessions were held in small seminar or conference type rooms, with participants sitting in a circular fashion around a table. Each focus group lasted between one and a half to two hours. Before the focus group began all participants were asked to sign a copy of the consent form (see Appendix B) and, in turn, I signed the consent form in front of them indicating my promise to maintain the confidentiality and anonymity of participants. I then explained to all participants that they were free to leave at any time and that they should not feel as though they had to answer any questions that made them feel uncomfortable. Before

asking any questions I also reminded participants that there were no right or wrong answers and that my aim was to gather honest opinions.

The focus group literature discussed the importance of considering whether focus groups represent individuals talking in a group setting or a more cohesive group. In an effort to address this issue, Hyden and Bulow (2003) also suggest a strategy to help in this regard by establishing a “common communicative ground”:

At the start, the participants may find a common ground in the task or topics presented by the moderator. They may also identify with each other as belonging to the same profession or sharing starting point for the interaction. Likewise, the participants may fail to establish a common ground, which means that they interact more as individuals who, although gathered together, do not constitute a group but just share a common focus. (p.311)

The authors note that groups will have different ways of coming together, while other will never achieve cohesion, and will simply discuss the issue at hand as individuals. Being able to determine whether a focus group has achieved common communicative ground has direct consequences on how the data can be analyzed and interpreted. In planning and structuring the focus groups, I attempted to address this issue directly. I made sure to include a balance of tasks and questions designed to ensure that all members had a chance to speak and also to have the group interact.

To address the possibility of dominating voices and participants not getting a chance to talk I began the focus groups by going around the table, having each participant say their name and answer a question. The question was general and meant to get participants comfortable before asking more specific questions. Although I followed a focus group guide (see Appendix C), the exact wording of questions varied by focus

group. Due to time constraints I was unable to get through all of the questions listed in the appendix. In general, I was not able to ask the last set of questions that focused on the welfare system. I did not aim to have the questions elicit specific information about justice as a concept; rather, I wanted the questions to act as conversation starters within the group. This happened more readily with some than others, with some questions producing more conversations than others. This variation seemed to be based on the range of interest and background of the participants included in the groups. For instance, education became a particular focus in one group, which included a retired principal. After the first focus group I reworked the format of the opening question to give all participants a chance to speak. This was a successful strategy to ensure all participants felt comfortable speaking in the group.

In addition to the focus groups, my data set also included conversations from a series of three town halls, two held in November 2007 and one held in November 2008. The town halls were held in collaboration with Nova Scotia Restorative Justice Program agencies and Nova Scotia Restorative Justice-Community University Research Alliance researchers. All sessions were held in Nova Scotia, one town hall was held in Sydney, another in the Millbrook First Nations community and the last in Amherst. All town halls were open to any and all members of the respective communities. They were designed to provide community members with an opportunity to learn about how restorative justice responds to youth crime and to share their views on the program's place within the community focusing on four themes: justice, community, accountability and success (See Appendix D for a complete list of questions). The town hall meetings began with



presentation by the respective restorative justice agencies. Following the presentations, participants were split into smaller groups and given a set of questions. These conversations were recorded and a facilitator helped record notes on flip charts throughout the discussions.

Once the focus groups and town halls were completed I personally transcribed all the sessions verbatim. This task, though long, provided me with an excellent opportunity to become close to my data. I took my time, making sure to transcribe and note all aspects of the focus group interactions. This included the “ums”, the “yeahs”, the long pauses, the laughter, as well as other interactions, beyond words, that became meaningful parts of the data. This also gave me with the opportunity to reflect on the more subtle nuances of the conversations and my role in this research. In this sense, my data consisted of both the verbatim transcripts as well as notes I took during the sessions. These notes included my initial impressions and attempts to make sense of the conversations.

### **Data Analysis: Making sense of it all**

After transcribing the conversations I was then faced with the task of finding a way to make sense of them. I knew I was interested in understanding the intersection between three broad themes: *restorative justice principles*, *views of justice in the criminal justice context*, *views of justice in the welfare context*. My analysis was focused on identifying analytical categories within each of these themes. More specifically, the initial question I posed in relation to the data was: “What is being said in these conversations?”

In attempting to answer this question I worked from a grounded theory perspective. Grounded theory gained popularity through the writings of Barney Glaser and Anselm Strauss, in their book *The Discovery of Grounded Theory* (1967). Grounded theory emphasizes the generation of theory from data. As Strauss and Corbin (1990) explain, grounded theory is a method whereby:

One does not begin with a theory, then prove it. Rather, one begins with an area of study and what is relevant to that area is allowed to emerge. (p.23)

Following this perspective, I approached data analysis in two stages. I first coded the transcripts line by line, identifying themes and giving them labels. This process laid a foundation for analysis and to help me identify relevant themes and conceptual categories (Charmez, 1983). The second coding stage consisted of what Charmez (1983) calls focused coding. In this stage, I selected a set of categories, developed from my first round of coding, and applied them to the entire data set. This phase constructed and clarified categories and subcategories of analysis. The categories that emerged from this first reading were as follows: the nature of youth crime; responsibility; prevention versus reaction; parenting and social norms; and expertise.

After this I revisited my data again and wrote down all the different things I felt were significant. I then tried to make connections between them. This process led me to develop three categories: (1) how people understand crime (2) how people view justice (3) what can be inferred about the relationship between citizen, community and state.

### **Methodological Reflections: the “Coulda, Shoulda, Woulda”**

This section will discuss the methodological issues that emerged while doing research. I will also reflect on what I learned from doing these focus groups and what this

methodology has taught me about conducting research more generally. As discussed earlier in this chapter, the methodological issues raised in the literature were: the extent to which focus groups replicate social context; group interactions and dominant voices; and the usefulness of vignettes in accessing normative beliefs. The social context provided by focus groups were a major reason for choosing this methodological approach. In considering this issue I asked myself the following question: what did the interactions of group members mean for the nature of the conversations? Listening and reflecting on the audio recordings it became clear to me that these were research participants talking in the context of a research gathering. In a number of instances participants would seek to clarify questions by asking “is that what you are looking for?” It was clear that they wanted to make sure I was getting what I wanted, and that it was a ‘contrived’ setting, when that was not how I wanted to conduct research. In proceeding onto the analysis phase, I made sure to consider responses given after these types of conversations a more thorough listen and also refer back to my notes to try and assess other non-verbal cues that may indicate when they were trying to give me the “right” answer.

As described earlier, Hyden and Bulow (2003) have noted the importance of considering group dynamics in analyzing focus group data. This issue presented itself in my research in two ways: the clear presence of dominant voices and in the nature of the conversations within the groups. In almost every focus group or town hall, there was a clearly identifiable dominant voice, which affected the conversations in different ways. In some cases the person would interrupt others or talk over others, and in other cases they simple spoke up more often and talked at greater length. This was a case in which

my inexperience in research played a role. I could have, perhaps, managed the interruptions more effectively. The dominating voice did have a clear impact on the nature of the conversations that took place. Often, with the open-ended questions, the first person to speak shaped the nature of the conversations. In reviewing the tapes of the sessions, it became clear the impact the dominant voices had on others and I did take this into consideration in my analysis.

The use of vignettes in the focus groups proved to be a good idea in theory and not so good in practice. The claim that vignettes had the potential to translate abstract concepts into something concrete was certainly appealing for this project. While they were useful, they perhaps required more skill in developing them effectively. I received a lot of clarification questions around the vignettes—leading me to think that they did not serve as concrete specific examples as expected. In addition, due to time constraints I was not able to use the second vignette I had planned on using.

Locating myself, as facilitator and interpreter, within the research process has important implications that require considerations. Listening and transcribing the recordings of the focus group and town hall conversations have helped me come to some interesting realizations about how the skills of the researcher can impact the research process, and also about the nature of the phenomenon being studied and the ability of this methodology to produce meaningful knowledge of this topic. These reflections have important implications for the meaning of both the data and knowledge produced by and through this research.

In undertaking this research I knew it would be a learning process, but at the same

time, I was hoping to produce meaningful research. This drive led me to focus a great deal on the designing of the focus groups. In particular I was concerned with ensuring that the questions I posed were general enough not to be leading but specific enough to relate to my research questions. The ways in which I heard myself clarify questions in the groups showed me that my concern in creating questions that were not leading may have led me too far in the opposite direction and that, in fact, my questions were too general. What this produced was conversations that did not necessarily speak to the research questions initially posed. This realization led to the re-wording of prompt questions in focus groups in an effort to fix this problem.

In my second focus group I was met with a moment of clarity, however. As I began to process what was being said in the conversations I began to realize that the problem was not necessarily that I was asking the wrong questions; it was that I was not listening to the answers. Participants were answering my question, just in a way I had not expected. This served as a good lesson in the dynamic nature of the research process.

Through the close examination and analysis of the data there were two areas of conversation in which my findings could be artifacts of the way questions were asked in the focus groups. One potential problem was with a focusing exercise given to rank sentencing principles (see appendix C). The principles included in the exercise were taken directly from the Youth Criminal Justice Act, however, the list provided was not given in any particular order. It was interesting to note that the more restorative principle were identified as being important more often than the non-restorative principles, however, they were not discussed as often as non-restorative principles. There is a

possibility that non-restorative principles were chosen more often because they appeared at the top of the list. It is important to note here, that these findings do match broader public opinion research. The second area was around definitions of community. The vignette used within the focus groups specifically talked about family (see appendix A), and many of my findings around community focused on the role of family and friends. Given that these discussions took place after the introduction of the vignette, there is the possibility that these findings are a product of the order in which the questions were asked.

More theoretically, in conducting the initial literature review for this project, one of the main themes identified was a disconnect between people's views of the criminal justice system and their lack of knowledge of the system (Roberts and Doob, 1989). This was something I hoped to address by not asking question directly about restorative justice, but about justice more broadly—since people would have little knowledge of restorative justice. Since participants were required to review the information and consent form before the focus group, they were aware of the subject of my research. This was evident within the discussions when I asked what justice would look like in a particular case; the suggestion of restorative justice was not a natural one. This is a problem that I am not sure I could have controlled, but an important one to acknowledge, especially in the way these conversations were analyzed.

## **CHAPTER SIX: ANALYSIS**

As discussed in Chapter four, the public's views on justice are both complex and contradictory. The focus group and town hall discussions completed for this research supported these broader findings. Participants describe crime as more than simply law breaking—in fact, including strong links between crime and individual/community morality. In terms of the overall goals of the justice system, participants want youth to learn a lesson from the justice process. Learning a lesson appears to be linked with two important issues that relate to my research question: the link to broader issues of morality and self-government, and the desire for youth to be held accountable for their actions in meaningful way. At the same time participants recognize mitigating factors that must be taken into account through the justice process. Most significantly, age and recidivism were identified as having an impact on the level of punitiveness that youth should experience. In this chapter, I turn to theoretical works of governmentality in an attempt to explain and make meaning of these findings. Theory will demonstrate how participants balance their ideas about varying levels of punitiveness by creating a particular relationship between citizen, community and state; one that distributes power along a continuum of justice and also creates particular roles and responsibilities for each social entity.

### **Defining Crime: From Pre-crime to criminal justice**

Crime is a complex concept. Through an examination of the focus group and Town Hall discussions, I will highlight how participants' understandings of crime link to notions of

individual, community and the state. When asked directly to describe who holds the responsibility for addressing youth crime, participants often hesitated in responding. After being prompted with additional questions from the facilitator, participants offered a range of different responses.

To begin, most groups identified the link between crime and the law, pointing to the centrality of the state in defining crime. From a practical point of view, a crime is a crime because the state defines it as such. Here we can see how crime was a matter of law breaking:

Larry: ... I mean ultimately it comes down to in any society what are the laws of the land in the society where you are? (Focus Group 1)

John: ...it's also very straight forward: if it is in the Criminal Code of Canada [laughter] therefore it is a crime. (Focus Group 1)

Inherent in these statements is the idea that crime is defined by government and lawmakers through the creation and modification of the Criminal Code. In this very direct way, participants are identifying the primary role of the state in defining the parameters of what is considered a crime.

The laughter that accompanied this statement may speak to the way in which participants recognized the simplicity of this way of defining crime. Participants recognized that just because something is in the Criminal Code does not mean that it should be a crime or that alternately there could be things not listed in the Criminal Code that should be. Participants' reaction to this overly simplistic definition of crime suggests we need to look beyond the Criminal Code at the more complex questions about social



norms and expectations.

As conversations evolved, participants talked about how crime results in injury. With this recognition, participants suggested that our definition of crime should incorporate individual and social dimensions. Here we can see how participants view crime in terms of “acts injurious to others,” implying the interconnectedness of individuals within society

Gilbert: I think that the notion of injury to others is a key one. (Focus Group 1)

In another focus group, participants again identified the centrality of injury to others and indicating that those crimes resulting in injury to the person should be considered more serious.

Everet: Well, I think your point, Jeff, about doing harm to other people...

Jeff: Yeah, it's usually, you know, what divides it up within the system, you know, the things that are you know – I guess there is only really one word to use-- but a crime against someone else is worse of an offence than other things. You know, it gets confusing too. There are so many different levels of what you do and whatever. (Focus group 2)

Here the participants are making a distinction between crimes that involves injury to a person versus those that do not. Participants seemed to believe that acts causing injury to a community member indicates a lack of respect. In addition, it could be inferred that a member of the community may see crime that involves injury as a perceived risk to themselves or other community members:

Gilbert: I mean one thing is for sure is that these crimes aren't crimes against parents, they are crimes against society, so, the general good has to be taken into account. (Focus Group 2)

Gilbert is talking about the importance of the “greater good”, implying that when a crime is committed, it has a particular impact on the broader society. The idea of injury is a central theme within the restorative justice literature. As Howard Zehr (1995) explains, crime is more than law breaking; it encompasses all those acts that are injurious to people, interpersonal relationships and communities.

Participants also discussed the idea of the social contract and how it relates to crime. As a participant noted, the social contract considers the interest of the majority, in other words, the broader community in which we live:

Gilbert: We kind of live under a contract, and if we go outside the contract then...be abhorrent in your behaviour, but unless there are some consequences that at least by general consensus are adverse to the interest of the majority...(Focus Group 1)

The idea of the social contract dates back to classical liberal theorists such as John Locke and Thomas Hobbes. The central premise is that the authority of the state is derived through an implicit and voluntary contract between citizens and the state. This contract provides a framework of rights and responsibilities in which citizens agree to give up certain rights and freedoms in exchange for the guarantee of other rights. As we will see in the next section, these ideas have important connections to ideas of justice.

Governmentality literature ties the idea of the social contract to governmental methods of social control. Governmentality theorists explain social policy as including a range of inclusionary and exclusionary techniques. Inclusionary techniques refer to ones that produce a “good” citizen—a responsabilized self-governing citizen. Exclusion happens when citizens have apparently proven that they are not capable of proper self-government and are therefore considered “bad” citizen and often become managed as part

of a problem population. As Rose (1999) explains:

The reverse of the responsabilizing moral imperatives of welfare reform is the construction and exclusion of a semi-permanent quasi-criminal population, seen as impervious to the demands of the new morality (271).

Here Rose implies that new modes of self-governing, which are characteristic of advanced liberal government, have become an important criteria on which we judge individuals as “good” or “bad” citizens. Following from this idea is the notion that “citizenship is not merely a political right but a moral contract” (Rose, 1999: 254). Identifying the importance of the social contract is significant because it makes a link to the fact that we all live in a society with communal rules. As a member of society we are assumed to have agreed to live by a set of rules and conduct ourselves accordingly.

Focus group participants described a number of grey areas in defining crime. These grey areas represent a sort of tension among individuals, and state and community definitions of crime. Since individual ideas of what constitute criminal behaviour vary, tensions arise when an individual does not believe something to be a crime, but other members of a community or the state have deemed it unacceptable.

Vincent: You know, there’s no generalized society rule for what the difference is, it’s too personal. (Focus Group 2)

Participants in another focus group shared similar views:

Mary: This even goes back to your first question of what is a crime? Part of that is as just a community member, not someone who is in law enforcement or whatever, like if you perceive something to be a crime or not will influence on how you act on it. Like I might not report a squeegee kid, but I might report something else that I perceive as more dangerous to the community, or whatever.

Larry: And that plays directly into drug crimes, so-called drug crimes, as well...

Mary: Ya...

Larry: ...because what some people deem as a crime; other people figure that's normal behaviour, you know? (Focus Group 1)

This discussion provides an excellent example of the effect of individual differences in defining crime. If someone does not believe something is a crime they may not report it to the police. As participants note, one person's definitions of a crime may not be the same as other members of the community. This tension between individual and community definitions of crime seems to cause a potential problem if we choose to live in a society and need to abide by the same rules. Through the course of the focus group discussion, participants discussed how society should agree on a set of standards.

Participants noted the need to develop a justice system that sets standards for a society in the face of tensions between community and citizen perspectives. Participants recognized that everyone has ideas of what they consider to be a crime, and that these differences represent a wide range of behaviours that people consider right and wrong. However, they position the state as the entity needed to bridge these differences. The following exchange between two participants provides a good illustration of peoples' thoughts on this matter:

Vincent: But, like, collectively maybe society is not putting enough effort on looking toward the middle, like what the focus should be. So, in other words, we are talking about bad behaviour, that's like the perimeter and that's always going to be hard to nail down. But, if we can agree on the middle, like, what's the focus—what's good behaviour. Maybe that would be a more constructive angle to get everyone working towards something and find common grounds. Because there is always going to be differences of opinion if you keep looking at the edge.

Jeff: Yeah, you know, there has to be standards within it. That's why the justice system exists, right? There has to be a standard and the unfortunate thing is it's not going to work for everybody. Every case, you know, it's impossible to have a system that's going to fit, that everyone's going to work within it, because there is

always exceptions. (Focus Group 2)

Gilbert: But, you know, there is a huge consensus in um, areas of disagreement are probably relatively small. They're highly charged, and they're high profile, but when you consider the huge number of agreed-upon crime [laughter from the group], um compare it to the red flag kinds of issues that we all argue about...

Larry: ...dispute issues, ya...

Gilbert: ...even, should this be a crime or not the reality is that the debate seems to be more about the tip of the iceberg then, um. (Focus Group 1)

This exchange highlights the wide range of crimes and situations that are dealt with under the umbrella of the justice system. First, participants are noting the need to focus on not simply criminal behavior, but to look beyond this, suggesting that we could benefit putting energy into promoting good behavior. This is another example of participants pointing to the importance of pre-crime options, which would promote "good behavior" as opposed to waiting to respond to a crime after it has occurred. Second, participants, again, talk about the level of disagreement involved in defining crime. The implication here is that we need a way of mitigating these varying opinions in order to set standards, a role that seems to be left to the state.

While it seems that defining crime is not straightforward, these conversations do outline a number of perspectives on crime. When taken together, the focus group discussions shed light on some of the complexities inherent in defining crime. A crime is a crime because the state has defined it as such. It is a violation of a social contract. Acts injurious to others provide a more direct threat to community safety and are therefore more easily defined as crime. Individuals within society may not agree on what should be

labeled as a crime and, therefore, the government needs to step in and create laws to bridge the gaps where people do not agree. While participants differentiate the role of individual, community and state, they ultimately defer to the state to define what is considered a crime. As they explained, they believe the state must take on this role because of the lack of consensus among individuals and communities. They accept that the state needs to set standards and that allowing individuals and communities to define crime for themselves would not be effective. The state plays the important role of picking up where individuals and communities end and bridging the divide. As the next section will illustrate, participants faced a similar dilemma when asked to define "justice".

### **Understanding Justice**

As we began to see in Chapter Two, justice is also a highly complex concept. Two somewhat different themes emerged through the focus group and town hall discussions about justice. Participants were clearly focused on ensuring youth who offend learn a lesson, with recognition of the contextual differences that needed to be taken into consideration when dealing with a particular case. At the same time there was a desire participants wanted to respond rationally, consistently, and fairly. Much of what people said about justice related to their desires to find ways to prevent youth crime in general and prevent recidivism among individual youths who have already committed crimes.

The focus group conversations about the meaning of justice centered around two activities: a short vignette, which described the fictitious case of Billy, and a more abstract ranking exercise (see Appendix C for complete focus group guide). In the

ranking exercise focus groups participants were given a list of fourteen sentencing principles including those outlined in the Criminal Code of Canada (see Table 2 for a summary). For this exercise, participants were asked to select the principles they thought to be important goals or guiding principles in addressing criminal behaviour. They could select as many as they wanted. Table 2 summarizes how often participants selected particular principles.

**Table 2. Principles of Justice selected by Focus Group participants.**

<b>Justice Principle</b>	<b>Frequency*</b>
Acknowledge and repair harms caused to the community	11
Community participation	10
Reparation (the making of amends for wrong or injury)	10
Acknowledge and repair harms caused to the victim	10
Rehabilitation	10
Victim participation	9
Holding the offender responsible	9
Fairness	6
Deterrence (act or process of discouraging certain actions)	5
Protection of society	4
Incapacitation (removal of offender from society so they can not harm others)	4
Denunciation (a public act of denouncing or “saying something is bad”)	3
Other**: Role Modeling/encouragement	1
Other: Parenting	1
<b>Total principles selected</b>	<b>93</b>
<b>Average number of principles selected per participant</b>	<b>6.65</b>

\*Participants were invited to select as many principles as they thought were important.



The principles that enjoyed the most support are also the most restorative principles<sup>2</sup>. In contrast, those principles more typically associated with retributive justice such as deterrence, incapacitation and denunciation had the lowest level of support. These findings are consistent the broader public opinion literature reviewed in Chapter Two. Specifically, this is consistent with the small pool of research on public opinion and restorative justice (Roberts and Stalans, 2006). However, as noted in Chapter Two support for restorative justice will require more than support for restorative principles.

Despite most participants choosing those principles closely linked to restorative justice, the discussions that followed did not focus on these principles. In thinking about why participants had less to say about these principles Barbara Hudson (2006) has noted that the term justice in popular culture has become synonymous with punishment. I would argue that participants see the restorative principles less as a justice or punishment issue and more something that is done prior to the justice system or in the private sphere.

When asked to discuss principles of justice, participants focused a great deal of attention on deterrence. It seems that ideas of deterrence were used in talking about a range of punitive and non-punitive justice principles such as incapacitation, punishment, and pfrevention. Participants had varied understandings of what exactly they meant by deterrence and the term was somewhat contentious. They did, however, share an understanding that deterrence was important:

Town Hall Participant: ...and like that's the thing, when it comes down to it, there has to be a form of deterrence. There has to be something- like obviously some people don't think that deterrence works...

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<sup>2</sup> As mentioned in Chapter five (p.58), there is a possibility that these findings exist as an artifact of the way in which the principles were presented to focus group participants. They are, however, consistent with broader public opinion research.

Here, interestingly, the participant is expressing support for deterrence while acknowledging that it may not "work." Perhaps there is a recognition of the need to consider deterrence, but it is not the only principle guiding the justice process. In another conversation, one participant further elaborated on the centrality of deterrence:

But, I think deterrence and I think that's broad. But, that's...to me that's the major point to fact and I think it should be the major standing of the justice system. It's that whole reason that we send people to jail in the hopes and the pretense that they're going to learn a lesson. But, a lot of times that doesn't happen and I think that's one of the big lacking things that we don't have anything in place that really deters people. So, what...that's my thing. That's probably the most important thing for me; is how do you deter them from doing it again? And that follows into a lot of things...like rehabilitation should be part of deterrence. And if deterrence is incapacitation then that's what it needs to be or versus...you know, reparation—it's all part of deterrence and that's what stood out to me.

This participant is seeing deterrence as linked to other principles such as incapacitation and reparation. This participant is also alluding to some broader themes of prevention, pointing to the need to find ways to stop people from committing crime. In fact this understanding of specific deterrence forms the basis for people's ideas about justice, and really seems to act as an umbrella term that is being used to refer to a number of other justice principles and practices. Ultimately, the way in which justice principles are talked about indicates the goal of justice is to prevent crime from occurring. How to go about prevention is what varies among participants. Here we can see this participant link deterrence to punishment:

Bert: Well, what about the question of deterrence though? I mean what if the most effective thing that can be done, this is not a position, it's just kind of an argument in a way. What if the most effective thing that can be done with or for Billy is what deters the next Billy. What if that's the theory, that all we are really worried about

is what has an impact on the next kid who might be tempted to shoplift. Then what is the answer? Is it a grounding? I doubt it. Um, you know, that seems like a minor reward. Then the question becomes harder, because it's not about Billy, it's about preventing other Billy's

Participants also discussed issues relating to general deterrence that place responsibility on individuals to have the ability to make a cost benefit analysis when deciding to commit a crime. In this respect, this part of the justice process is the responsibility of the individual.

Jeff: ... Like, some people feel very safe downtown—I feel safe downtown—I don't worry about it. But, there are other friends I have who won't walk after dark in downtown Halifax, you know? I think some of are too subjective. You know, what deters some people versus doesn't deter other people. Some people need...some people can't be deterred; they're going to do what they want no matter what. So, a lot of it is too...that's the problem is that it's open to too much personal interpretation.

Jeff is explaining here that he believes deterrence does not work the same for all people. While deterrence may be effective in deterring some people from committing a crime, others may not be deterred. This variation speaks to the need to look beyond deterrence in forming a more complete view of justice.

Participants articulated their view of "specific deterrence" by describing it as "teaching a kid a lesson." As one participant explained, by learning a lesson a youth learns respect. In at least one participant's view, punishment can help youth learn a lesson.

Grace: I think that punishment should almost be turned into a positive thing. If this kid here had to go and help the store people with their business or just say do the yard work or do something just to have some sense of responsibility and kind of learn like the whole work ethic and how much these people work...that kind of thing. I think it's very important...first time in court, ok, just a slap on the wrist.

They have to learn the respect...(Focus Group 1)

Following from these ideas of deterrence is the need for youth to face some form of consequence in order for justice to be achieved. The desire for consequences is also tied to the idea of the social contract discussed earlier. If a member of society chooses to break the contract, he or she must face consequences for those actions. However, as advocates for restorative justice would argue, consequences need not come in the form of punishment. The following quote provides a good illustration of this:

Jeff: ...the whole point of this [justice] system is that there are no consequences. I mean, you pick up trash for 60 hours, that's not a consequence. I used to have to do that for nothing for Sunday morning, picking weeds out of my parents' lawn. I didn't get paid for that, nor did I get credit for it for any reason.

While there was general agreement about the need for consequences, participants did not agree on what type of consequence was best. Many argued for a method that considered the circumstances of the offence, particularly whether it was a first or second offence.

Age of the offender was another contextual factor that participants identified in their discussions about how justice should be achieved. The following exchange between two participants shows how the age of the offender was seen as linked to the level of accountability or responsibility that could be attributed to the youth, and also implies the need to provide consequences that take this into account:

Tammy: Well, I mean that should be a major consideration when you're punishing youths. If they're fifteen and I guess they're younger than eighteen I don't think the [punishment] should be as severe as when you're eighteen or my age. Because at this age they have hormone imbalances [laughter from participant and at least one other in the group] they don't really know what they're doing. They know but they don't really know. So...

Monica: Yeah, I know what you mean. They're impulsive.

Tammy: Yeah, they're impulsive. It's a very turbulent time for a fifteen year old. Whereas for me, I would know exactly what I am doing and I am passed that stage so you should take that into consideration. (Focus Group 3)

Here participants are identifying the particular reasons why youth may not have the same awareness as adults. As the participant pointed out, youth “know but they don’t really know” what they are doing. This statement implies that participants believe that youth are not able to take meaningful responsibility for their actions. The message from the focus groups was that the consequences for youth must be adjusted based on their diminished understanding of consequences in contrast to adults.

The views of the focus group participants are reflected in the widespread practice of having youth justice systems separate from adult systems. Every legal system has a youth justice system that is separate from the adult justice system (Bala, 1997). The general logic is that youth lack a certain maturity, and have “limited capacities, and hence require distinctive, or at least separate treatment from adults” (Bala, 1997: 1).

Traditionally, to determine criminal responsibility, two elements must be present. The first is *actus reus*, which refers to the act of committing the crime. The second element, *mens rea*, refers to the criminal intent: “the existence of conscious intention or fault in violating prescribed legal standards” (Hudson, 1998: 1). It is this second requirement that has been the basis for making a distinction between “youth” and adults in the criminal justice system and which the legal distinction was created putting less responsibility on the youth. This leaves some important questions about the ability of youth to be held

accountable for what they have done in a meaningful way, and therefore should they be seen as breaking the social contract in the same way as an adult who understands what they are doing?

Along with distinguishing between young people and adults, participants drew clear lines between youth who committed one offence versus those committing consecutive offences. They explain that subsequent offences signal that the youth has not learned the intended lesson and was therefore poised to become a threat to the safety of the community. Here, one conversation highlights how learning a lesson and repeat offending relate to responding to youth crime:

Jeff: But, what did they do in the first two times, didn't they ground him then too? You'd assume... I mean I'd be locked in the basement for a week. I mean, really. Well, maybe not locked in the basement but I would have been in trouble. You know? I would never have done it again.

Everet: That's right, I think everybody....you know, kids are kids.....but, you there's a time to teach a lesson.

Jeff: Yeah, obviously there is no lesson being taught or there's no retention of it. (Focus Group 2)

Jeff's observation highlights an unwillingness to allow youth an unlimited number of chances. A sense of specific deterrence underlies this belief. If a youth fails to respond, people's willingness to help the youth shifts. Participants are therefore placing some degree of responsibility on the youth to play a role in the justice process by offering them a chance to change their behaviour. While youth may lack the self-awareness of an adult, participants only feel comfortable offering them one chance to learn a lesson. Jeff took several opportunities to explain the need for youth to learn a lesson after the first

offence. Referring to the vignette once again, Jeff stated that:

Jeff: I don't know if anyone else, but, the first thing I focused is the fact that it was his third charge. I think you get chances, but you get caught doing this, he is fifteen, so you'd assume that it all happened relatively recently—in the last few years. You know, I don't necessarily believe in three strikes, but, it's the concept that he's been charged three times but why is he still out able to shoplift? You know, what happened the first times? You know what I mean? Um...large chains don't usually don't take that stuff very lightly either. You know, I know people who were caught shoplifting at Wal-Mart and they're not allowed within 100 feet of any Wal-Mart in Canada. That's part of what happens. But, again it's at that age—where do you draw the line. I would focus, personally, I believe he should be punished because it's his third time. You know everyone makes mistakes, to some degree, I mean if you're thirteen and you get caught shoplifting yeah your parents might deal with it. But, he should be forced to pay for whatever he broke and then it should be looked at 'well buddy this is your third at this' you should know better by now, you've been told twice that you are not allowed to do this....

Everet: I would agree with what you're saying. If it was his first time, and I would say yeah, the parents involved and make him pay for it. But, this is the third time. (Focus Group 2)

Jeff: You've done it once—you should have learned your lesson. If you didn't learn it the first time...hmmm...you know? (Focus Group 2)

Other participants were less explicit, but their views still touched on this same problem. Some participants felt that youth could be given more than one chance, just not unlimited chances. When participants were probed further on the issue of chances, it became clear that youth could be able to make mistakes, but once a “pattern” began to emerge, participants became less willing to accept these behaviours.

Everet: Well, when there is starting to be a pattern that's when you have to deal with it and say why is this pattern starting to happen? And we would all agree that kids are kids and they all do stupid things and you know? That's the time to teach, but when a pattern is starting to happen, how do you handle it? I think you move beyond this stuff...

Facilitator: So, it is the pattern that needs to be addressed?

Vincent: Yeah, well I think that adds to the pattern and this is beyond what we were talking about...but, why do I not commit crimes? It's because I am much more interested in doing other things. This kid is probably really bored. Like, what is this kid jazzed about? They need to get something that they're into. Like, I'm sure that he is into something that he could be excited about and move forward with. (Focus Group 2)

The emphasis on a pattern of behaviour may indicate that participants see a sort of threshold of accepted criminal behaviour for youth. They seem to believe that, while the primary goal of justice should be to help teach youth the difference between right and wrong, they concede that the system must consider the number of offences. If a youth has committed offences in the past and continues to do so, participants seem to believe that he or she is not capable of "learning the lesson." It is at this point that the youth's status changes; he or she is now a serious repeat criminal; dangerous and posing a risk to others in the community.

A great deal of time within the focus groups and town hall meetings were spent on the topic of prevention, early intervention and education. Generally, participants made clear distinctions between idea of prevention, which they linked easily with notions of welfare, and the reactionary role of the justice system, which they linked to more formal criminal justice interventions. For many participants, education and intervention are the only hope in effectively addressing crime. One participant provided an interesting analogy for this explaining:

Vincent: I grew up on a farm, and once the weeds begin to appear in the field, it's too late. (Focus Group 2)

This comment speaks to a desire to see youth steered away from crime with the aim of



preventing future crime. It is significant to note that, throughout the discussions of justice, participants are able to make a clear connection to prevention, thus linking crime and justice to ideas of pre-crime attempts at prevention. In another focus group one participant makes a more explicit distinction between the ways participants think about prevention versus reaction. In responding to the vignette about Billy, one participant observed:

Bert: ...What if the most effective thing that can be done with or for Billy is what deters the next Billy. What if that's the theory, that all we are really worried about is what has an impact on the next kid who might be tempted to shoplift. Then what is the answer? Is it a grounding? I doubt it. Um, you know, that seems like a minor reward. Then the question becomes harder, because it's not about Billy, it's about preventing other Billy's.

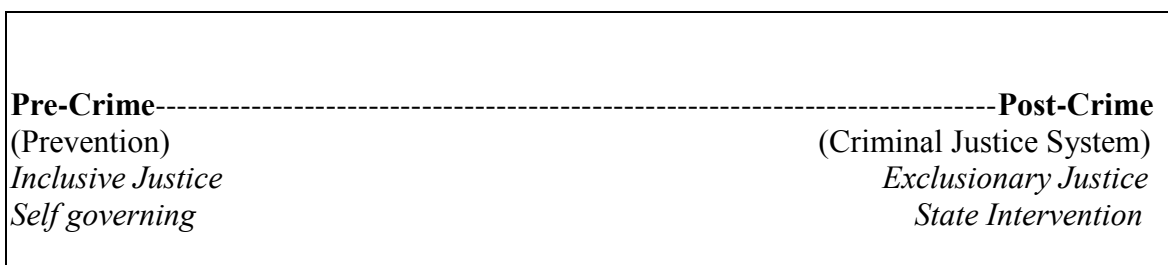
The nature of these conversations was a clear indication that participants understand the connections between the welfare programs and crime prevention programs. What was less apparent was the links between welfare services that are essentially reactionary.

Zedner (2007) makes a useful distinction between pre and post-crime societies that may shed light on the discussion above. She explains that, in recent years, we have experienced a shift from a focus on responding to crime to a focus on assessing risks and preventing crime before it happens. I have drawn on the terms used by Zedner (2007) for an important reason. Much criminological literature is focused on either the area of crime prevention or reactionary models of criminal justice. Both of these topics carry with them particular discourses or ways of talking about crime. The prevention discourse focuses on identifying risk and protective factors that make youth more or less likely to commit crime (O'Malley, 2008). Through this research, however, I am not referring to identifying

risk factors, rather, I draw on more optimistic notions of risk (O'Malley, 2008) that allow us to understand how restorative justice may fit into notions of risk without placing it within the discourse on prevention.

Bringing these concepts together we can see interesting parallels between the inclusionary/exclusionary divide that is used within the governmentality literature, restorative versus retributive approaches to justice (detailed in Chapter One), and distinction between crime prevention and the reactionary criminal justice system (or to borrow from Zedner pre-crime versus post-crime societies)(see Figure 1). With participants making the clear links between achieving justice and the need to prevent crime, we can begin to understand justice as not simply the justice system. This understanding also helps to make use of the various principles of justice prioritized by participants. Those principles of justice which guide interventions in pre-crime situation will be different from those which guide interventions at the second or third offence.

**Figure 1. The Justice Continuum**



### **Justice as a Process: Justice as more than the justice system**

As explained in Chapter Two, governmentality theorists see that the relationship between citizens-community-state is comprised of a web of interconnecting power relations. In

contrast, participants offer a more linear model for citizen, community, state interaction. Examining the conversations, participants laid out different roles for citizens, communities and the state. The roles, however, are not necessarily distinct from one another. Rather, when taken as a whole, the roles set out for individuals, communities and the state complement each other and help to paint a well-rounded understanding of how to respond to youth crime.

Taking stock of what we have seen through an examination of the data, two seemingly different themes emerge. Participants want to see parents and community members involved in “early stages” of criminal behaviour or breaches of the social contract. At this stage youth need to be taught a lesson at the community level. If it subsequently becomes clear that the youth is not learning the lesson, then the justice system must step in and take over. At this point the goals shift from helping the youth to protecting society.

Families and parents are given a great deal of responsibility in providing a moral compass for youth and teaching them the difference between right and wrong. Several participants indicated that youth crime is a responsibility shared by many, but rooted in family issues.

Claire: I believe it's a shared responsibility, first and foremost. You know, again, it has to...it has to be rooted in the family and the home and whoever the guardians are.

Knowing the close connection participants make between crime and morality, we begin to understand that the role of the family is to provide a strong moral ground in order to steer

youth away from criminal behaviour. In the case of a first or second offence even, it is still the parents, friends and family who need to step in and help the youth learn a lesson from what has happened. As noted in the previous section, “learning a lesson” did provide a sense of justice if it worked to deter future offending. Participants identified a number of ways of accomplishing this larger goal of teaching kids a lesson. Conversations tended to focus on the role of parents and friends in educating the youth and providing them with a strong moral grounding.

Vincent: Because, you know, some parents think this is okay and some parents don't. You know, some of his friends smoke pot in the house, because their parents do.

Participants view variability in parental definitions of right and wrong as a major obstacle in dealing effectively with youth crime. Recognizing, then, that disagreement is inevitable, the state (in the form of the Justice System) is being cast in the role of mediating between opposing moral standards. Laws and the criminal justice system then become manifestations of the state's effort to balance competing moral standards. In this sense, the state- run criminal justice system serves to mitigate competing definitions of right and wrong.

On the topic of parenting, many conversations in the focus groups focused on “how things used to be.” Many participants indicated that things “used to be better” and that youth used to have a clearer sense of right and wrong. In particular, participants pointed to a lack of proper parenting as a major problem area:

Everet: Well, one of the things that I ‘ve discussed, being a little older than you people at this table, with my friends, is that we have children that are your ages. And, the comment is that my parents did a better job at raising me than I did of

raising my children. You know, my parents brought me up with a strong moral compass....

Jeff: That doesn't exist anymore

There was a sense that children or youth are lacking in the proper morals to guide them into making the right choices. Further to this, participants noted a change in the relationship between parents and children:

Jeff: Parents don't want to parent and kids don't want to be parented.

In one focus group participants discussed a case in which a child took their parents to court to challenge discipline practices. This challenge was seen as something that would never have happened years ago, and something that signals a problem with the way community is handling the responsibility of teaching youth right and wrong, with the state left to fill the gap.

Town Hall Participant:... You know, and the parents are having trouble, the community is there to support them and back them up, not just demonizing that child or you know that individual. Um, I think it's a major tear in our social fabric, the sense of community isn't there like it was in my father's time. You know, when he was growing up, he is fifty now, he tells me about all these things, where you know, you said a couple streets over....

This quotation provides another example of how justice and its related functions start first with individuals and the community but end with the state when things stop working. When parenting and community interventions did not appear to be working anymore, after a pattern of crime became evident, then something more needs to be done. Further, the way the participant talks about how these things would not have happened "in my father's time" is a clear signal that this is how they would like to see it again, with the

community being able to address these situations without the state (vis a vis the courts) having to be involved.

When probed people were less clear about how these things could be successfully accomplished through the justice process. This view point does indicate that parents and family are not solely responsible for justice matters, there needs to be consequences in place when parents and family are not enough. What we see here is a hesitation about putting full trust in parents.

Drawing on narratives of “how things used to be,” participants made reference to a time when individuals and communities were more involved, when parents were unable to fill the role of moral educator.

Town Hall Participant: ...you know from the time I was in elementary, and I am twenty two now, I was taught don't talk to strangers. So, don't get to know your neighbors, right? There was the Block Parents program, right, but you don't see it anymore. You know, they're starting to try and get it back. But, what does that says, is I don't know my neighbor, well, I'm not going to think twice about their situation or ...and I don't mind stealing or breaking or you know, vandalizing something. And, it's the sense of community, you know, where you're going to get justice. You know if the children are being raised, and the family life isn't good, then the community steps in and you know, maybe just one or two members of the community that are stepping in and getting this child involved in things.

In presenting narratives and stories of “how things used to be” participants are making reference to something they would desire to see again and also what they think is wrong with the current relationship between citizen, community and state. In other words, through these various conversations about the glory days of parenting and community involvement, participants are painting an ideal picture of how things could be, while they also qualify much of this with a belief (from experience) that this is not how

things currently work. We can take these dialogues as representing a desire for parents and community to take a more active involvement in parenting and instilling strong morals in the youth of today.

Despite the desire to see parents and community members involved in the justice process, there was a certain degree of reluctance expressed towards the involvement of both parents and community:

Larry: I think, too, with community participation it's really difficult, because if you're depending on voluntary community participation what you're going to tend to get I think—and again I'm guessing here—is you're going to get the four or five loudest voices in the community [mumbles of agreement from one or two other] who have very strong opinions about local criminals and again are not going to be very rational.

In terms of justice, here, the participant is highlighting the need for justice to be “blind” or neutral, free from the emotions that can color the process. In this sense, participants saw justice as being consistent—with the same crimes, in the same circumstances, getting the same punishments. Community and individuals were not seen as providing this rational consistency. Just as the state and the justice system was cast into the role of bridging the gaps between differing views of right and wrong, here they are being given the role of applying these moral standards consistently and fairly.

Given the role of the state as an impartial entity, hesitation was also expressed about the potential success of the criminal justice system intervening with youth and helping them learn a lesson. One participant explains as follows:

Jeff: ....Because I think they are the people who, they aren't cops. I think there is a major pre...negative look at justice...cops, courts...they are bad. These are the people who are going to put me away. So, these are people who have no interest

or no...they're not viewed as negative... my nephew as an example, anything a cop says is "you're a pig, you're a pig, you're a pig" that's what's going in his head and so it goes in one ear and out the other, cause they are negative. (Focus Group 2)

What is significant here is that the role of police is seen as to "put people away" and this acts as an obstacle if they are also to take on the role of teaching kids a lesson. Participants saw these lessons as being conveyed through other professionals (such as teachers and social workers), family and peers. We can, however, see these roles as somewhat complementary to one another.

If we are to think of justice as a process, then it is easy to see that each of these social entities have a particular role to play in the process and is linked with different guiding principles of justice. It is the job of parents, friends, family and peers to help steer youth in the right direction and teach them right from wrong<sup>3</sup>. Community seems to play a complementary role, filling in where others are lacking. That leaves the state to take responsibility once it becomes clear that the efforts of citizens and community are not working. Once it becomes clear that the youth has fallen into a pattern of crime, then the focus of the justice process shifts to protecting society, something that is seen as the responsibility of the state. The process is therefore a linear one—with more serious offending requiring responses from higher authorities.

### **Restorative Justice: Making connections and bridging the divide**

Theoretically, the focus group discussions provide interesting insights into both the potential ways in which restorative justice could be used to fulfill public opinion and also broader questions about the relationship between community and the state in justice

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<sup>3</sup> As mentioned in Chapter five (p.58), there is a possibility that these findings exist as an artifact of the order in which questions were asked in focus groups.



matters. What is perhaps most clear from this research is the fact that participants have an understanding of justice as more than simply something operated by the state.

A close examination of the data presented in Chapter Two and the focus groups discussed here has shown that the public are open to many of the key elements of a restorative conception of justice. People have an understanding of the complexities in both defining crime and addressing criminal behaviour. Restorative justice defines crime not simple in terms of law breaking but in terms of harm. Defining crime in this way allows for those most directly impacted by the crime and with the most knowledge of the circumstances of the crime to define the harm that needs to be addressed. In fact, Llewellyn and Howse (1999) propose, a restorative theory of justice is underpinned by a broader relational framework. This framework is premised on the idea that relationships are central to us as social beings since we are all products of our relationships with others. Therefore, relationality is at the centre of the way we interact in the world. Extending this to matters of crime and justice implies that the harm (to relationships) caused by a “criminal act” should be the focus of the justice process. Incorporating the concept of relationality, restorative justice is able to better account for these broader understandings of crime as more than simply law breaking.

Further, people are open to more citizen and community involvement in justice matters, something central to restorative justice theory. However, this openness is tempered by an understanding of the role of the state as providing a level of fairness and consistency that those directly involved are not capable of.

There was a clearer understanding of the role that individuals and communities

play “pre-crime,” participants explained that it is the role of friends and family to help instill a moral compass in youth and that “kids these days” are missing this direction which results in an increase in youth crime. While statistics may dispute this claim, what is clear is that people see parents, friends, and family as being responsible for teaching youth the difference between right and wrong. The key here is that this instruction is something that needs to be done before youth commit crime. When youth commit a crime, it is still seen as an opportunity for them to “learn a lesson” and, I argue, it is for this reason that the number and nature of the offence are important to the public in determining how to address youth crime. At this early point, youth are seen as making a mistake, but, they can still be taught right and wrong and how to manage their own risks. Once they hit their second and third offence, they are no longer seen as able to manage their own risk and so they begin to be seen as on the path to exclusion.

As an approach to justice, restorative justice it offers a way to incorporate these different positions set out by participants. Restorative justice theory already offers a wide range of programs and processes that can be adapted to fit different justice needs (at different points along the continuum). On the one hand, restorative justice offers the opportunity for those people closest to the harm to be directly involved in the justice process. Further, restorative justice offers a broad spectrum of processes that can be used to fit the unique circumstances of the crime. Most importantly, these processes offer those closest to the youth the opportunity to help teach the youth a lesson while at the same time providing a structure within the processes that allows for a level of consistency. Both are things that seem to be important to participants in relation to

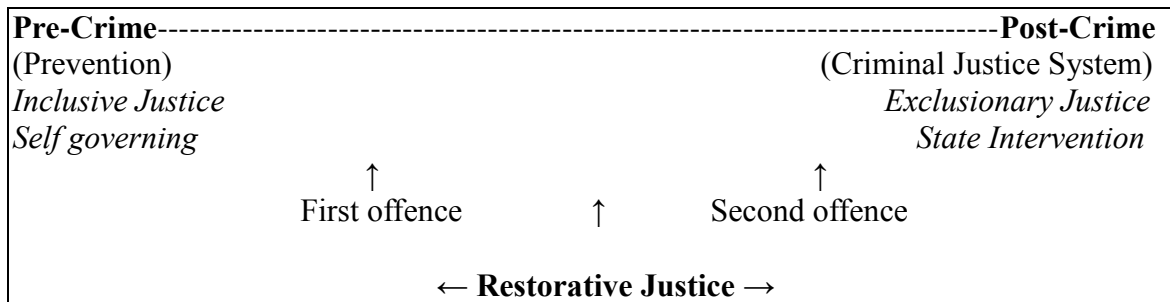
justice.

The public may have a better understanding of restorative justice in the pre-crime context. Participants were comfortable talking about justice in a way that was familiar to them. According to Dean (1999) this familiarity is an example of the ways in which people are governed:

On the one hand, we govern others and ourselves according to what we take to be true about who we are, what aspects of our existence should be worked upon, how, with what means, and to what ends. On the other hand, the ways in which we govern and conduct ourselves give rise to different ways of producing truths (p. 18).

If individuals and community are going to become more involved in the justice process, then, perhaps a good place to start is with the areas in which they already feel they have the “knowledge”, in the more “informal” or “pre-crime” programs. There is the potential for restorative justice in these contexts, in Nova Scotia for example the restorative justice program has expanded and restorative practices are now being used within the province’s crime prevention strategy. For instance, the province has implemented restorative practice in schools across the province. This means that conflicts that arise within the school are addressed using the principles of restorative justice. Given the flexibility of restorative justice, and the different programs that fall under the umbrella of a restorative approach, a good place to start may be with programs that integrate the public in “pre-crime” situations aimed at helping youth develop a strong “moral compass” (Figure 2).

**Figure 2. Governing Crime and the Justice Continuum**



Bringing all this together, what participants are suggesting is that the way we learn to become responsibilized citizens is a process that involves different interventions in different circumstances (Pre-crime/post-crime). These views are reminiscent of advanced liberal values. However, while governmentality theorists might suggest that different forms of power are being dispersed at different points of intervention along the continuum and that the different forms of knowledge that people have drawn on in the focus group discussions represent different forms of power at work. Participants offer a more simplistic view that shows these entities working in a more complementary capacity. Most importantly, the process of justice is not something that is the sole responsibility of the state.

Many restorative justice advocates argue that a shift towards restorative justice requires a paradigm shift in the way we view criminal justice. (Zehr, 1990) The details, however, of what exactly this paradigm shift may look like has not been articulated in any depth within the literature. I argue that, in line with the way people view justice and justice related issues, this paradigm shift should involve a shift of the way we currently

view justice matters in terms of either prevention or reaction, and it should make room for individual and community involvement in the process.

## CHAPTER SEVEN: DISCUSSION

This study aimed to explore how people understand justice and to look at what their understandings might mean for the theory and practice of restorative justice. Many of my research questions focused on the relationship between citizen, community and the state that emerges when we contemplate the meaning of justice (see Chapter 1 for a full list of research questions).

This final chapter will draw out the findings presented in the previous chapters and discuss how these findings relate to each research question. In addition, I will explore how the results of my research might inform the development of restorative justice practice and, more broadly, what they mean for the way justice can be achieved.

### *Overview: What have we seen so far?*

This thesis began with an exploration of the history of justice, which showed that matters of justice, and how we define crime, are not static. Rather, a society's responses to crime change and are linked to its broader social and political characteristics. We cannot, therefore, investigate our current justice processes without also considering the broader social and political context.

As a way of examining the rather abstract issues built into my research questions, I have drawn on the related works of governmentality. This body of work provided me with a way to conceptualize the relationship between the key social and political entities involved in the justice process citizens-communities-state. Governmentality theorists present an understanding of government as a web of power, which is dispersed among

communities and citizens in an effort to scale back direct governmental involvement.

Government, however, retains control by dispersing power in such a way as to maintain their advanced liberal agenda. The relationship that forms between citizen-community-state is predicated on a struggle for power. The governmentality literature is critical of this dispersement of power (techniques of government), implying that communities and citizens are unable to exert free will, but rather are compelled by government into fulfilling advanced liberal objectives.

I moved on to examine a large body of empirical work on public opinion of the justice system. This literature indicates that people's opinions are complex and often contradictory. For example, people seem to be open to the principles of restorative justice but they are cautious about its processes. While the relationship between citizen-community-state is not studied directly, I am able to deduce some implications from this literature. Most questions on public opinion polls ask about punishment and sentencing. Both are state-controlled processes, and this body of work takes for granted that the state plays the central role in justice. Polls effectively marginalize the roll of community and citizen. This is a common criticism of the current criminal justice system by restorative justice scholars. (Llewelyn and Howse, 1999) The small amount of research on restorative justice within the public opinion literature, however, suggests that the public understands that the state cannot accomplish justice alone. In fact, when asked explicitly who holds responsibility for justice matters, members of the public do not see justice as the responsibility of one sole entity. Rather, they see justice being a responsibility shared by society (Roberts, 1988; Atlantic Community Justice Project, 1999).

This research first asked: **how do people think justice should be done?** To answer this question I first explored how people understand crime and justice. I found that people see crime as more than a list of items in the Criminal Code. Participants in my research also identified harm as a critical concept for determining the severity of crime. They also understood that defining crime is a subjective endeavor, with individuals having different ideas of right and wrong.

Deterrence was the overarching principle guiding peoples' ideas about justice. Overall, they felt that justice was being achieved if the youth has learned a lesson and understood that what they have done is wrong. Participants in the focus groups expected that the youth would subsequently not commit further offences.

The next research objective centred on identifying the relationships and contradictions people create between principles of justice. Through this research participants identified a number of other principles that all played a role at difference points along what I have described as the Justice Continuum. For instance, while deterrence seems to be important, incapacitation becomes the guiding principle if the youth shows a pattern of bad behaviour. The use of the principles deterrence and incapacitation is closely linked to how they view the relationship between citizen, community and the state. Just as participants did not see one particular entity, citizen-community-state, as being responsible for justice, there is no one principle of justice that governs justice matters. Instead, participants explain the requirements for achieving justice as being dependent on the offenders, their past offences and willingness to actively accept responsibility for their actions.



The implied relationship between citizen, community and state was one in which everyone has a role at different points along the justice continuum. Primarily, youth are seen as responsible for becoming good, responsible and moral citizens. This form of responsabilization is done early on the justice continuum. Peers and family play an important role in helping to teach youth right and wrong. They are also seen as those most likely to help teach youth a lesson after they have committed a crime. The state picks up from here and becomes involved when other informal sanctions do not work, when it is clear youth have not learned right and wrong.

The second research question looked at **what this view of justice means for restorative justice?** The first objective was to assess public openness to the principles of justice embedded in restorative justice. The existing literature showed the public to be supportive of restorative principles such as restoration and reparation. My study found similar results, with the caveat that participants are most receptive to informal justice processes earlier on the justice continuum. People want more formal state interventions only when absolutely necessary. In this way, people emphasize the offender not the offence. Participants seem to be looking at an offender's history, and whether he or she is taking responsibility for his or her actions and less about punishments that fit the crime.

The second objective was to assess people's openness to the enhanced role of the community and citizen inherent in restorative justice. While family and peer involvement was seen as important in youth learning a lesson, community and victim participation was approached with more caution. Community members and victims were seen as potentially carrying too much bias for justice to be achieved. This suggests that people

may see it as necessary to involve the state as a neutral arbiter of justice.

A significant observation can be made here in relation to the definition of community. Participants talked about the importance of those close to youth being able to help steer them in the right direction. In doing this they provide us with an understanding of community based on social bonds rather than geography, common interest, or shared space. This has important implications for both restorative justice and governmentality theory, as we will see in the following sections.

The final research question **asked about the implications for governmentality theory, given what I found about people's views of justice.** The first objective was to analyze the issues of governance embedded in the way people understand justice. Participants showed a desire to mold youth into responsible, self-governing individuals. This resonates closely with the governmental process of responsabilization. Responsibilization is a technique of government through which individuals are made to take responsibility for their own actions and wellbeing in matters that were previously the responsibility of others under a welfare state. In the case of restorative justice, youth are being asked to take responsibility for their actions and to right the injustice they have caused. Under a welfare state, the state helped youth in conflict with the law through welfare programs and services.

The focus group data suggests that power is not distributed to any one entity (citizen-community-state), but, rather, power is distributed to these various entities at different points along the continuum of justice. Power is dispersed in this way because family and friends are seen as better able to achieve the goals earlier on the continuum,

but, the state must step in further down the continuum, when the principles of justice are prioritized differently. What this produces is a mutually beneficial relationship between citizen-community-state, in which each entity is taking responsibility for those aspects of the justice process for which they are needed. Early on the continuum friends and peers are seen as best able to help steer youth in the right direction (something participants did not see being accomplished by the state); further along the continuum the state takes over to address more serious repeat offenders.

The second objective was to assess how the citizen-community-state relationship associated with people's views on justice relates to issues of governance. According to participants in my research, citizens, communities and the state all play different, yet complementary roles in the justice process. In this sense, rather than the responsibilities of government being downloaded to communities, participants see community as the most effective entity to deliver the services necessary in seeking justice. It may be overly simplistic to assume that community is an extension of government.

The final objective sought to analyze what these issues of governance mean for restorative justice. Understanding the state's role in the justice process throughout history, highlights the importance of examining restorative justice programs and how they work with government. This includes looking at the ways in which restorative justice programs have become institutionalized, as it seems that having some link to government is important to participants. Governmentality theorists have implied that the state is shifting responsibility for justice matters onto communities and individuals through the responsibilization process. Participants in my research did not view this process as a bad

thing. Participants indicated, in fact, that in some cases individuals and families are more likely to be able to accomplish the goals of justice than the state. Perhaps governmentality theorists need to consider views of the community in their critique of advanced liberal technologies of government.

### ***Contributions to Knowledge and Directions for Future Research***

My hope is that this thesis will in some way illustrate the benefits of exploring how people think about justice concepts. More specifically, the information may be of value to restorative justice practitioners, restorative justice scholars, public opinion researchers and governmentality scholars. After completing my analysis, I was left with the following question: what do these findings mean? The following sections will focus on assessing what the findings of this project mean in terms of the two areas of knowledge: restorative justice and governmentality.

### ***Implications for restorative justice: Communities teaching youth right and wrong***

To begin, given the importance of community to both restorative justice theory and practice, this thesis broadly contributes to understandings of the degree of community support for restorative justice. In particular, the research will add to conversations among restorative justice scholars as to the meaning and nature of community by focusing on the role of friends and peers in defining a person's community.

The focus group and town hall conversations clearly identified a central role for family and friends in shaping the moral character of youth. They also talked about past times when broader community involvement in teaching youth right and wrong was common. In contrast, participants note the absence of this broader community involvement

in present times. Perhaps people have adapted their understanding of community to fit our current individualist culture, where community involvement is seen as sticking your nose where it does not belong. What participants put forth is a more nuclear notion of community, one that includes close friends, peers and family. The focus group and town hall conversations clearly identified a central role for family and friends in shaping the moral character of youth and in doing justice when something goes wrong. This is an important consideration in defining a community in both restorative justice theory and practice, with community being such an important element of a restorative conception of justice. Restorative justice theorists need to take into account this conception in any attempts to define community.

Further research is required to determine how community is defined by the public or if perhaps the label of community indeed refers to an individual's network of friends and family members, as was the case in the focus group discussions. Given that participants expressed some hesitation towards community involvement, worrying that they maybe biased, what role should broader community members have in restorative justice? Would restorative justice provide a means for community participation in a way that matches the way in which participants in my research want to see it work?

The citizen-community-state interaction present throughout the focus group and town hall discussions provides further support for restorative justice. Participants clearly saw the goal of the justice process as help teach youth a lesson and guide them into making "moral" choices. This view implies that youth are responsible for taking advantage of the opportunity. At the same time, participants seemed unwilling to give youth too many

chances without the threat of more serious, state sanctioned punishments. The desire for youth to take responsibility was not necessarily seen as being possible by state actors. Rather, the need to accept responsibility is seen as best accomplished through peer and family influence. This provides solid support for restorative processes, especially those with direct involvement of friends and family. These findings demonstrate a need to consider the role of friends and family in helping to provide meaningful consequences to youth in restorative justice processes, while at the same time taking into account the potential for bias.

The varying level of involvement by different actors along the justice continuum also has implications for both restorative justice theory and practice. One of the unique aspects of a restorative theory of justice is its application to a wide variety of contexts and situations and at different points along the justice continuum. Therefore, the potential exists for programs based on restorative justice principles to be developed along the length of the continuum, with varying degrees of offender, victim, state involvement. The potential is already there for this range, as a number of restorative justice scholars have put forth a continuum of restorative practices (Zehr, 2011). The continuum consists of a range of restorative practices from less restorative, to partially restorative to fully restorative (Zehr, 2011). Restorative practices are programs that have been created to address a certain type of situation based on restorative principles. As mentioned earlier, for example, Nova Scotia has implanted restorative practices in schools. In addition, the province is looking to develop restorative practices aimed at addressing elder abuse. This presents an interesting situation where the victim and abuser are often either family or have a close relationship.

Within the context of restorative justice theory, conceptually clarifying the roles of individuals, communities and the state along this continuum would be a good place to start.

***Implications for Governmentality: Who holds the power?***

This project also contributes to theoretical discussions of governmentality. Specifically, this project can contribute to discussions about the role of community and the process of self-government in governing crime. Much academic work in the area of governmentality is focused on theory building rather than theory testing. While this project was not directly intended to test governmentality theory, governmentality was used in interpreting conversations. In fact many aspects of advanced liberalism were evident within conversations. For instance, participants' desire to have youth held accountable could be seen as techniques of government meant to shift responsibility onto individuals (responsibilization). Also, the emphasis on community involvement is something heavily discussed in the governmentality literature. The key differential is that the governmentality literature portrays this shift in responsibility as a manipulative downloading of responsibility. In contrast, participants indicated that it was the individual and community who could accomplish certain aspects of the justice process better than the state.

A big focus within governmentality literature is the role of communities in the exercise of governmental power. Participants did not use the term community specifically as playing a role in justice processes. They did, however, discuss the role of peers and family members as well as non-justice officials. According to the conversations these different individuals and groups play different roles at different

places on the justice continuum. For instance, friends and family play a role in providing youth a strong moral grounding, and non-justice officials are seen as having the potential to get through to youth in a way that police or justice officials may not. Governmentality theorists would do well to examine the exact mechanisms through which we are taught values of advanced liberalism. Based on the findings discussed in this thesis it is clear that a third space of government, in the form of community, does exist. In fact, there is reason to look at less abstract definitions of community focusing on individual's networks of friends and family (i.e., a closer knit community). Perhaps our notion of community under advanced liberalism has become more individualized? One place to start in exploring this would be to look more in depth at the role of friends and family.

Within focus groups and town halls, participants discussed the role of youth in actively participating in justice processes. They explain that youth also play a role in learning a lesson, and in fact this is one of the reasons people become more punitive in their views towards repeat offenders. A certain amount of responsibility is placed on the young offender to take advantage of opportunities to learn right from wrong. A failure to do so seems to change the way participants view crime and the degree of blame or responsibility they place on the youth. Future research in this area would be beneficial in order to better understand exactly what the public would like to see happen in order for youth to accept responsibility. Specifically, research that sought to provide an in-depth understanding of the process and responsibilities of self-government and how this may best be accomplished would be beneficial. In relation to restorative justice it would be beneficial to look at what youth learn through restorative processes by talking directly to



those involved, with the goal of understanding if and how they can be kept accountable.

The emphasis participants placed on family and peers rather than broader notion of community also speaks to the value that was placed on some form of community involvement in justice. Through much of the governmentality literature, community is portrayed in a negative light. Community is seen as a tool of governmental action, used to achieve neo-liberal agendas. Listening to the focus group and town hall conversations, I would argue, participants do not see community involvement as problematic. In fact, it is seen as a positive thing in so much as peers and family are seen as being able to get through to youth better than justice officials. Rather than see community as a negative tool, if we look at it from the perspective of helping youth, it can potentially achieve things government cannot.

### ***Directions for Future Research***

The findings of this research point to the need for further research in two key areas of knowledge: Governmentality and restorative justice. In terms of governmentality theory, for instance, friends and family were seen to play a role in providing youth with a strong moral grounding, and non-justice officials were seen as having the potential to get through to youth in a way that police may not. Governmentality theorists would do well to examine the exact mechanisms through which we are taught values of advanced liberalism. Based on the findings discussed in this thesis it is clear that a third space of government does exist. In fact, there is reason to look at less abstract definitions of community focusing on individual's networks of friends and family. Perhaps our notion of community under advanced liberalism has become more individualized? One place to

start in exploring this would be to look more in depth at the role of friends and family and their link to ideas about community.

In addition, issues of self-government were important in relation to the effectiveness of the justice process. However, little work has been done that explores the process of self-government and link it to creating responsibilised citizens. Research that sought to understand in more depth the process and responsibilities of self-government and how this can be achieved would be beneficial. In relation to restorative justice, research that looked at the experiences of youth involved in restorative justice processes in order to understand what they are learning through these processes would be beneficial.

Finally, in relation to restorative justice, further research is required to determine whether community is defined differently by the public or if perhaps the label of community indeed refers to an individual's network of friends and family members. Given that participants expressed some hesitation towards community involvement, worrying that they may be biased, what role should broader community members have in restorative justice?

The varying level of involvement by actors along the justice continuum also has implications for both restorative justice theory and practice. One of the unique aspects of a restorative theory of justice is its application to a wide variety of contexts and situations and at different points along the justice continuum. Therefore, the potential exists for programs based on restorative justice principles to be developed along the length of the continuum. Within the context of restorative justice theory, conceptually clarifying the roles of individuals, communities and the state would be a good place to start.

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## APPENDICES

### Appendix A

#### Focusing Exercise 1

Billy (15 years old) has just been charged with shoplifting. It was the third time. Previously he had taken things from large national chain. This time it was from a small business. Up to now Billy couldn't see the problem. The shops were so large. They wouldn't even notice what he had taken. This time it was different.

Sarah and Joe had started up their own business only recently. They had a large loan, and were just starting to make a decent profit. Billy had come into the shop on a Saturday morning. Sarah had noticed that he was edgy and nervous. Before she could say anything, he had whipped a glass figurine off the shelf and run out of the shop. Sarah reacted instinctively. She rushed out and chased him down the street, shouting at him to stop. Billy panicked. He shouted back at Sarah and sprinted faster. Scrambling over a wall to escape, he let go of the figurine. It smashed into pieces on the pavement. When Sarah caught up, she stood over the broken glass, shaking. She realized the risk she had taken chasing a stranger.

Billy's parents are shocked by Billy's actions and have grounded him.

#### Focusing Exercise 2

Gavin is 12. He has been taken out of class on several occasions because of his behaviour. He is now suspected of damaging cars outside the school. Gavin is often seen out late at night, either by himself or with older children. Gavin is being raised by his father who is often seen out drinking and seems to have no control over the family home. His mother is not around.

### Ranking Exercise

*Which of the following principles do you consider to be important goals or guiding principles in addressing criminal behaviour?*

*Select those you feel apply, and single out one which you believe is most important. Please feel free to add additional principles.:*

- ☐ Acknowledge and repair harms caused to the community
- ☐ Community participation
- ☐ Victim participation
- ☐ Reparation (the making of amends for wrong or injury)
- ☐ Denunciation (a public act of denouncing or “saying something is bad”)
- ☐ Acknowledge and repair harms caused to the victim
- ☐ Protection of society
- ☐ Rehabilitation
- ☐ Deterrence (act or process of discouraging certain actions)
- ☐ Incapacitation (removal of offender from society so they can not harm others)
- ☐ Holding the offender responsible
- ☐ Fairness
- ☐ Other: \_\_\_\_\_
- ☐ Other: \_\_\_\_\_

## **Appendix B**

### **Research Information and Consent Form**

#### **Restorative Justice and Public Opinion: Context and community conceptions of justice in Nova Scotia**

Kathryn Bliss  
Department of Sociology and Criminology  
Saint Mary's University  
Halifax, NS B3H 3C3

#### **Introduction to the study and Purpose of the Research**

I am a graduate student in the Department of Sociology and Criminology at Saint Mary's University. As part of my master's thesis, I am conducting research under the supervision of Dr. Diane Crocker, and I am inviting you to participate in my study. This research is funded through the Nova Scotia Restorative Justice-Community University Research Alliance (NSRJ-CURA). The NSRJ-CURA is a collaborative research partnership between university and community partners. The NSRJ-CURA is focused on research related to the institutionalization of restorative justice practice with particular attention to the example of the Nova Scotia Restorative Justice Program. For more information regarding the NSRJ-CURA please visit the website: [www.nsrj-cura.ca](http://www.nsrj-cura.ca)

Participation in this study is completely voluntary, so please read the following information about this study and if you agree to participate please sign the consent form.

Canada's youth justice reforms have been ongoing since they began, and Canadians remain dissatisfied with the system. The latest manifestation, the Youth Criminal Justice Act, opened the door to the use of restorative justice within the criminal justice system. As an approach to crime, restorative justice aims to repair harm to the victim, offender and the community and is expressed in a wide range of programs. In 1999, the Nova Scotia government created the Nova Scotia Restorative Justice Program (NSRJP). This comprehensive, provincially based, program for young offenders is the only one of its kind in Canada. One of the objectives of the NSRJ program is to increase public confidence in the justice system. In addition, community support and participation is a central tenant of a restorative approach to justice. My research will be aimed at examining how members of the Halifax community approach justice in an effort to better integrate community into the justice process.

Your participation in this study will involve you taking part in a group discussion on the topic of justice. The discussions will be in groups of between 8 and 10 individuals and will last approximately 2 hours. The session will be recorded and another researcher may also be taking notes during the discussions. The purpose of the research is to examine people's beliefs about justice, and as such there are no right and wrong answers to any of the questions. While there are no direct benefits to your involvement in this study, this research has the potential to influence policies surrounding the NSRJP. It is for this reason that your experiences and beliefs about the justice process are so important.

### **Potential Risks/Discomforts**

There are no physical risks associated with your participation in this project. If at any point during the session you become tired, you may stop to rest or take a break. If any questions make you feel uncomfortable, you may choose not to respond. **Your participation is completely voluntary. You may withdraw at any time during the focus group, without penalty.**

All information obtained in this study will be kept strictly confidential. To protect individual identities, this consent form will be sealed in an envelope and stored separately from all recordings and transcripts. Furthermore, in any material produced from this study there will be no reference made to the individual's real names or other information that could be used to identify participants. The only other person who will have access to data with identifying information will be my supervisor, Dr. Diane Crocker. Due to the nature of the group discussions I am unable to guarantee anonymity within the group, however your participation is completely voluntary and you may choose to refrain from disclosing information you do not want others to know.

If you have any additional questions, please feel free to contact me at [kathryn.bliss@smu.ca](mailto:kathryn.bliss@smu.ca) or my thesis supervisor Dr. Diane Crocker at [diane.crocker@smu.ca](mailto:diane.crocker@smu.ca).

**Informed Consent:**

This research has been reviewed and approved by the Saint Mary's University Research Ethics Board. If you have any questions or concerns about the study, you may contact Dr. Veronica Stinson, Chair of the Saint Mary's University Research Ethics Board at [ethics@smu.ca](mailto:ethics@smu.ca) or 420-5728.

*By signing this consent form, you are indicating that you fully understand the above information and agree to participate in this study.*

---

\_\_\_\_\_  
Signature of Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Researcher

\_\_\_\_\_  
Date

Please keep one copy of this form for your own records.

## **Appendix C**

### **Focus Group Interview Guide**

#### *Introduction/Welcome*

- ☐ Remind participants about confidentiality/anonymity
- ☐ Remind participants that there are no right and wrong answers to any and the importance of their input
- ☐ Remind participants that they are free to leave at any time
- ☐ Explain expectations: Want everyone to have a chance to talk, but, one at a time. There is a pad of paper there for you to write down your thought.

#### *Icebreakers/background*

What do you think about when you think about justice?

What makes something just?

What do you think of when you think about youth crime?

What causes crime?

Who is responsible for crime?

Who should deal with crime?

Do “we” have a responsibility to deal with crime? If so, what?

#### **Focusing Exercise 1 : Prompt Questions:**

What is the role of the justice system in this case?

What is justice in this case? Why?

How can justice be achieved?

What would it involve?

What should the role of the state (governments) be in this situation?

#### **Ranking Exercise: Additional Prompt Questions**

Can you choose one principle that should take priority over others?

Do you see any conflicts between these principles? Why or why not?



Do you see any conflicts between these principles?  
If there are ties- why

*Describe your "ideal" justice system?*  
*What would you change about the current justice system to make it better?*

*Why do we have a justice system?*

*What are the principles which make it 'just'?*

*Are there one or more principles which are more or less important?*

*What is the role of the state in this system?*

*Is there a role for people or agencies other than formal justice people (police, lawyers, judges, probation) in this system?*

*Is there a role for community members or citizens in this system?*

**Preamble:**

We have been talking until now about the justice system (ie. Catching, deterring, and punishing ppl). Now I want to switch focus and talk a little about other departments, such as Health, Education etc. and the role they play in dealing with youth.

*Prompt Questions:*

*Should this kid be dealt with by crowns/police/corrections or nurses, social workers and psychologists?*

***What should be their role in dealing with kids like Billy?***

*What should be the ultimate goal /principle that should guide this type of intervention*  
*What are the principles which make it 'just'?*

*Are there one or more principles which are more or less important?*

*What is the role of the state in this system?*

*Is there a role for community members or citizens in this system?*